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Reducing online gambling black markets

an analysis of international practices used to combat online gambling black markets

September 2024

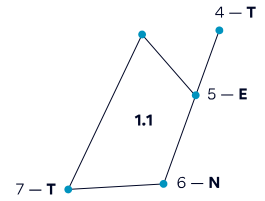
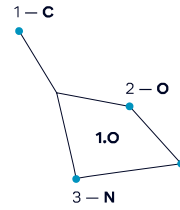


Executive Summary

Black markets are difficult to measure but often easy to see and scale. Regulus has analysed twelve jurisdictions alongside Britain to establish what consumer frictions create black markets, how effective black market countermeasures are, and provide examples of anti-black market regulations to measure best practice. The key findings of this report are:

- **Black markets are created when gambling customers cannot access products or find those products highly restricted in their domestically regulated market; no amount of anti-black market measures will prevent a black market from forming if customers cannot gamble enjoyably with limited friction**
- **While the UK has historically had a relatively low level of black market participation, there is clear evidence that this is growing and there are clear reasons why: price frictions in bonuses, free bets and other financial limits; to avoid financial scrutiny caused by ‘affordability’ checks; because more products can be available online (soon to be a bigger gap due to £5 slot limits); and to avoid self-exclusion (also see Frontier Economics). *While some or all of these frictions may be desirable, if they are not counterbalanced with black market frictions they will prove counter-productive***
- **Britain’s historically low level of black market participation means that countermeasures have not been used to their full potential despite an online black market size that is now estimated at £2.7bn in staking terms or c 2.1% of the British online gambling market (Frontier Economics), a figure we believe is conservative and likely to grow**
- **However, taken as a package, legal and regulatory countermeasures can be highly effective in creating additional frictions to channel players to the domestic market:**
 - preventing black market operators from targeting consumers through mainstream and social media provides a competitive advantage to licensed sites, removes a forum for engaged gamblers to seek ‘workarounds’, and significantly reduces the risk of less engaged gamblers playing on black market sites by accident. The Online Safety Act has the potential to be a powerful tool in the fight against the black market, if further steps are taken to classify illegal gambling products as 'priority illegal content'
 - ISP enforcement undermines the ability of black market operators to build brands, communicate with customers, and use affiliates to demonstrate regulatory workarounds
 - payments enforcement is key to making the black market less viable, but working with banks to ensure legitimate customers can gamble is equally important
 - enforcing against the supply-chain of technology, content, and services providers who support black market operators can undermine black market competitiveness
 - criminal enforcement can tip the risk-reward to reduce the supply of black market offers
 - a public blacklist can help empower customers while also being used as an enforcement tool with other regulators and stakeholders

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Part I: how Black Markets work and leakage rates

This report demonstrates why black markets occur, how effective regulatory countermeasures are, and what best practice can be obtained from international markets. Part I explains that black markets exist because consumers are unable to find the products they want at the right price or value or with sufficient choice in domestically regulated markets. While black markets are necessarily opaque, these demand characteristics make them relatively easy to size, which Regulus triangulates with independent or official estimates.

Explaining online channelling rates

Regulus explains channelling rates observed in thirteen different jurisdictions by using a simple model that scores three types of customer friction: product frictions caused by banning or restricting gambling products; price and value frictions caused by regulations which distort prices or get in the way of customers legitimately spending what they want to spend; and limitations of customer choice. The consumer friction rating model highlights the causes of black markets and how they vary between jurisdictions as well as over time. When tested against black market sizing data, the model demonstrates that these consumer frictions clearly cause black markets, and if regulation-driven consumer frictions increase then black markets increase also.

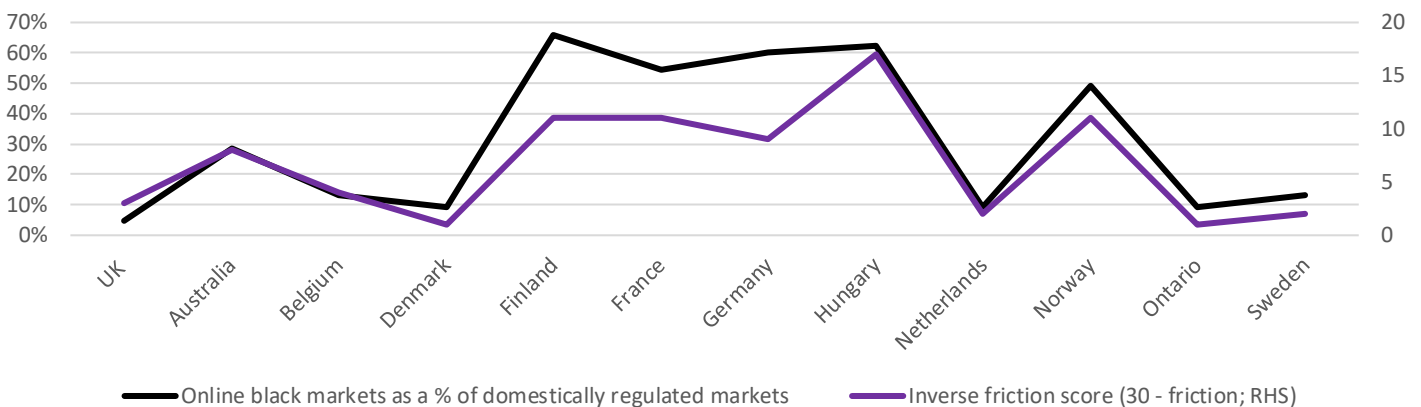
Customer cohorts and black market use

Gambling is a consumer discretionary product, meaning that consumers who are wealthier and more engaged tend to dominate revenue. This Pareto curve is observable in many different consumer discretionary markets and gambling is no different. However, from a policy perspective, a failure to factor in the different behaviours of different cohorts is likely to result in failure. For example, while disrupting the visibility of black market sites might help to limit mass market engagement, it will not stop the c. 10% of customers who represent c. 85% of revenue from actively seeking the content they want to engage with at a non-distorted price or value.

Cumulative consumer frictions from regulation

While individual frictions might be quite small in isolation, their impact is cumulative. A simple model predicts the size of black markets based on the level of friction present due to the regulatory framework; it very closely correlates with black market size estimates that have been independently corroborated.

Black/offshore market as a proportion of the total online market (2024 est)



Explaining online channelling rates

A black market occurs when customers gamble with a provider which is not licensed in the jurisdiction where the customer is, and where a licence is required by law to either accept customers or to 'target' them with advertising and localised content or payment methods. Channelling is used to describe activity and revenue flows into domestically regulated markets, while leakage is used to describe flows into black markets. Measuring black markets is inherently difficult compared to legitimate business: what customers do online is typically private, while the gambling providers (operators) who accept customers without a licence are often deliberately opaque. However, while it is not possible to estimate the precise size of black markets, there is enough data and evidence to estimate their scale across a number of jurisdictions relatively accurately, in our view. The basis and evidence for Regulus estimates on black market size for each of the jurisdictions covered in this report is provided in Part Three.

The main causes of black markets are regulations which prevent or restrict a consumer from playing the products they want to play at prices that are not significantly distorted by regulation or tax. Regulus groups these regulatory frictions into two key categories:

- **Product frictions:** banning product categories or limiting their appeal with restrictions; for example, France and Australia both ban online casino products, while in a far less extreme manner Britain is planning to introduce £5 slot spin limits for over-25s, with £2 for 18-24-year-olds; **these and other frictions might be desirable, but they need to be matched with frictions to black market usage to stop them from being counter-productive**
- **Price and value frictions:** by making the price of gambling more expensive through price (payout) controls (as in France), taxes that directly impact consumer prices (eg, Germany), taxing non-cash bonuses and so limiting their size and use (most jurisdictions including Britain), or less directly, regulations that prevent a consumer from spending what they want, such as 'affordability' checks (as have been introduced inconsistently in Britain, causing the ability to sample cause and effect)

In addition, **consumer choice** is key to most digital marketplaces since supply and demand cannot be constrained by physical presence. The need for consumer choice is also significantly exacerbated by any rules which some operators follow while others do not. While most jurisdictions we examine, including Britain, have a licensing regime which delivers high levels of consumer choice, it is important to understand the impact of monopolistic policies on channelling since these can explain the size of black markets and whether black market countermeasures can work against powerful countervailing forces. Gambling monopolies in Europe especially are also typically constrained by product and marketing limitations designed to protect their legal status, but which effectively diminish their competitiveness against offshore competition. The anti-black-market tools employed in monopolistic regimes may therefore appear to be less effective than they would be where consumers had more choice.

Regulus has created a rating model for these three regulatory sources of consumer friction (product, price, choice), which illustrates cumulative impact. The consumer friction rating model highlights the causes of black markets and how they vary between jurisdictions as well as over time. When tested against black market sizing data, the model demonstrates that these consumer frictions clearly cause black markets, and if regulation-driven consumer frictions increase then black markets increase also.

Some regulatory frictions might be required and effective to improve player safety or to gain social-political acceptance of a regulated industry, but domestic consumer frictions need to be matched with frictions to black market usage to stop them from being counter-productive

Product frictions

A large number of regulators (including GB, Ontario, Denmark, Belgium, France, Netherlands, and Germany from our sample) now provide information on product mix either directly or through tax data (Germany). Despite varying gambling cultures and regulatory regimes throughout the world, consumer gambling habits are perhaps surprisingly homogenous. The fact that most customers in most parts of the world like to gamble on broadly the same things means that if a product is restricted or absent its impact on the size of a domestically regulated market is very visible. These restrictions essentially create a visible consumer demand gap that black market operators will attempt to fill.

Typical online product mix



Source: Regulus Partners estimates

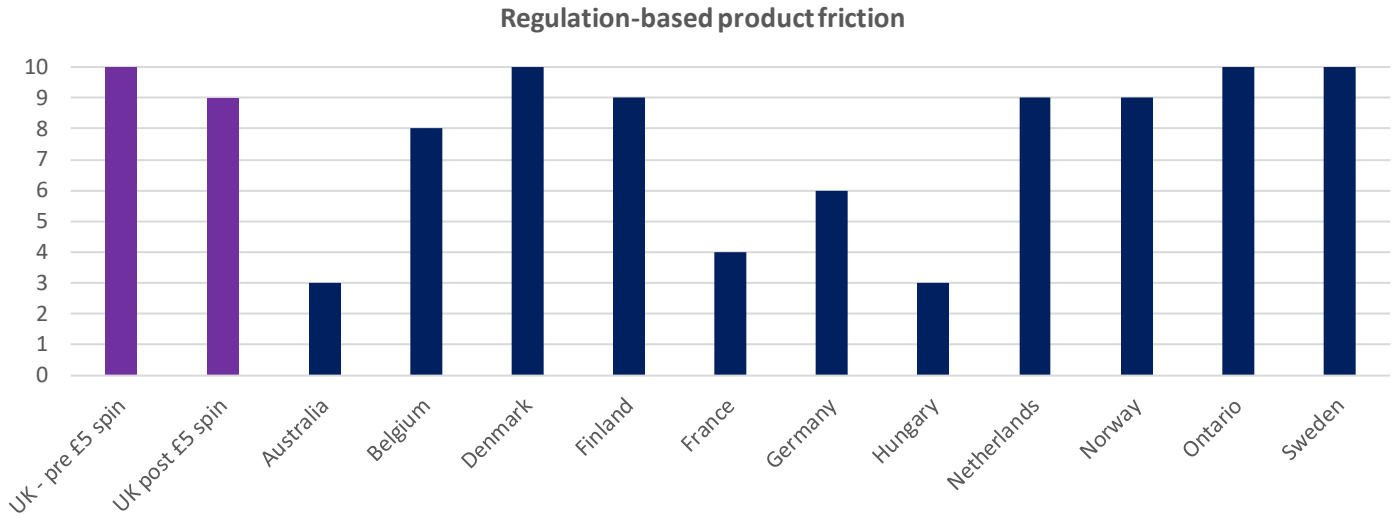
The most significant product frictions that are currently occurring in the jurisdictions we analyse are:

- **Australia:** bans all online gaming (typically c. 70% of expenditure) and in-play betting (c. 50% of betting expenditure); note Australia has a very strong horseracing product which partially mitigates these distortions
- **Belgium:** requires betting, casino and arcade (slots-style games) accounts to be kept separate
- **France:** limits the availability of betting markets to an authorised list and bans all casino games other than poker (typically c. 67% of customer expenditure adjusting for poker)
- **Germany:** limits the availability of betting markets to an authorised list and bans casino games for most licensees except for slots limited at €1 per spin and poker
- **Great Britain:** until recently had very few product limitations through regulation, although bookmakers might limit access to certain products for commercial reasons; the plan to introduce £5 spins to over 25s provides a good example of small volumes with potentially material black market impact: in 2017 slots spins over £5 comprised 1.7% of spins and 28% of slots revenue¹; slots represent c. 50% of total online gambling expenditure² the restrictions therefore impact c. 14% of GB revenue

¹ <https://www.gambleaware.org/sites/default/files/2020-12/analysis-of-play-among-british-online-gamblers-on-slots-and-other-casino-14318.pdf>

² <https://www.gamblingcommission.gov.uk/statistics-and-research/publication/industry-statistics-february-2024-correction>

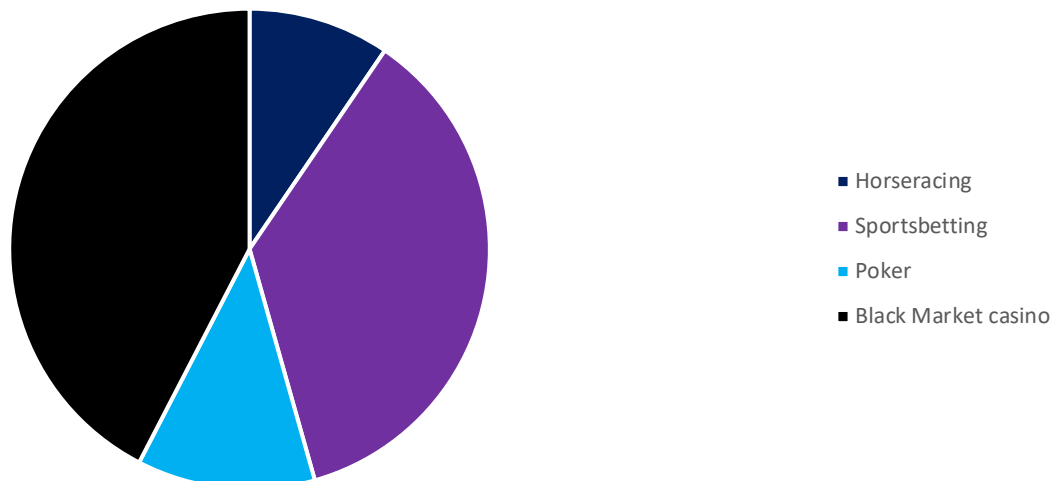
The availability of product based upon relative popularity allows us to score jurisdictions in terms of product friction, with 10 being no material restrictions. Since Britain has not yet introduced any material product-based restrictions the jurisdiction scores a 10, but the planned introduction of £5 slots to over 25s brings this down to 9.



Source: Regulus Partners estimates

There is already an established evidence-based link between major product gaps and the size of a black market. For example, the French gambling regulator ANJ estimated that the black market for casino products in France in 2022 was €748-1,500m.³ Regulus believes this figure to be materially understated because of the importance of high value customers and the cumulative impact of other distortions such as price (see below). However, even if the official French figure is correct, it shows that between 27% and 42% of the online market in France is channelled into the black market.

France: channelling due to product friction



Source: ANJ, Regulus Partners estimates

³ https://anj.fr/sites/default/files/2024-07/Rapport_annuel_2023.pdf (pp 44-47)

Price and value frictions

There are three ways in which price distortions can create consumer frictions that encourage a black market:

- Regulations specifically set the price to be less competitive
- Taxes on player stakes or player winnings increase prices
- Customers are not able to gamble to the value they wish

France is the only jurisdiction in our basket which has set consumer prices by regulation. In order that horseracing is not disadvantaged, French sports betting licensees cannot offer better value than an 85% payout ratio, compared to a more normal market ratio of 90-95%. French bettors can obviously therefore find better value in the black market. Taxes which affect consumer prices also cause black market leakage and reduce channelling because they mean customers can find better value by avoiding domestically regulated markets. Taxes which directly impact price explain a large black market in Germany, which imposes a c. 5% tax on stakes for both betting and gaming products.

Index to net revenue	Illustrative turnover tax distortion					
	25% revenue tax		5% Turnover tax		Price impact	
	betting	gaming	betting	gaming	betting	gaming
Net revenue (expenditure)	100	100	100	100		
Stakes	1429	2500	833	1111	-58.3%	-44.4%
Gross margin	7.0%	4.0%	12.0%	9.0%		
Tax % stakes	1.8	1.0	5.0	5.0		
Tax % revenue	25	25	42	56	67%	122%

Source: Regulus Partners estimates

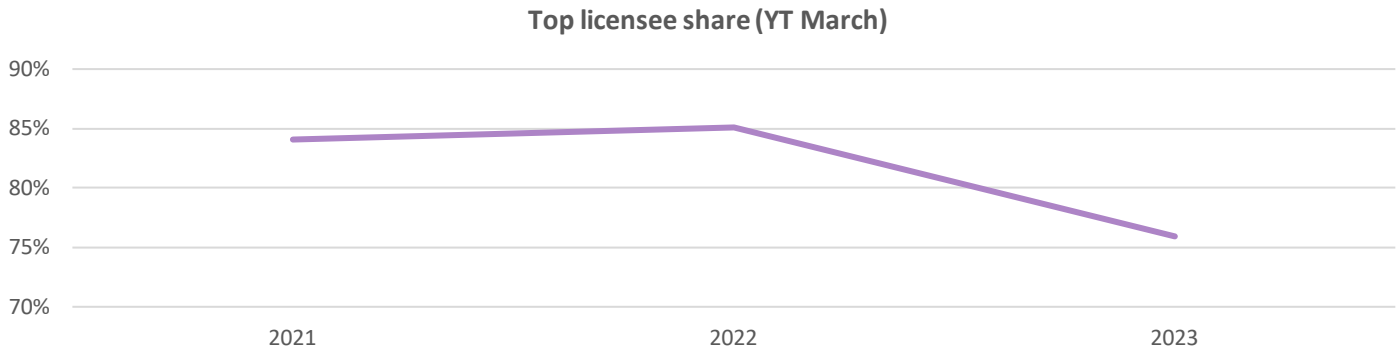
Great Britain taxes gambling revenue net of prizes rather than taxing stakes, it does not tax gambling winnings, and it does not impose payout restrictions which give black markets a price advantage. The extremes of this lesson therefore do not appear to apply to Great Britain. However, Great Britain does tax player incentives which are essentially non-cash items designed to attract and retain players with free play. Internationally, bonus rates tend to run at 2-50%, with the historical online bingo market in the UK often running at 50% prior to bonuses being taxed in 2017. Bonuses are a key customer acquisition and retention tool with a similar value to cash marketing; many marketing affiliates also specialise in showing customers where the best bonuses are.⁴ The impact of this can be illustrated using Great Britain’s current 21% tax on online gaming.

Bonus rate	Bonus tax distortions on channelling					
	0%	17%	29%	38%	44%	50%
Gross Revenue	100	120	140	160	180	200
Bonuses	0	-20	-40	-60	-80	-100
Cash revenue	100	100	100	100	100	100
Tax	21	25.2	29.4	33.6	37.8	42
Effective tax rate	21%	25%	29%	34%	38%	42%

Source: Regulus Partners estimates

⁴ A simple internet search will demonstrate the large number of affiliates and large number of bonus options available

A more complex way of distorting price is by preventing customers from depositing and spending the amount they want to spend at any given time with any given licensee. While there are sometimes good reasons to stop consumers from spending, an obvious response is to spend elsewhere. In Britain, this dynamic can be seen from the introduction of ‘affordability’ checks, which have impacted the largest licensees far more than the long-tail because of the nature of Gambling Commission scrutiny and enforcement. The impact of ‘affordability’-led changes which affected the top GB licensees more than the overall market can be seen in official Gambling Commission data, which collects and publishes revenue data on both. ⁵



Source: Gambling Commission data

Between March 2022 and March 2023 the major licensees lost c. 9ppts of market share, with the publicly listed companies explaining the impact and the cause:

- **Flutter** December 2022 preliminary results (released March 2023) for UK and Ireland Online: *...a decline of 19% in H1, which was impacted by the annualization of our proactive safer gambling initiatives taken across 2021... (FY22 was down 1%)*⁶
- **Entain** December 2022 preliminary results (released March 2023) for UK Online: *In the UK, NGR was -9% behind 2021 as the business absorbed a number of regulatory changes...*⁷
- **Evoke** December 2022 preliminary results (released April 2023) for UK and Ireland Online: *On a pro-forma basis, revenue declined by 20.2% to £717.4m mainly due to the additional player safety measures implemented across 888 and William Hill brands across the previous two years.*⁸

‘Affordability’ measures in Britain were effectively therefore having the effect of channelling player revenue away from the largest operators pushing through early implementation of ‘affordability’ measures to the c. 200 smaller licensees who have not all faced such consistent pressure and enforcement from the Gambling Commission as the top operators.⁹ It is not unreasonable to infer therefore that if stringent ‘affordability’ measures are rolled out across all licensees and properly enforced, a similar channelling effect would occur from the smaller licensees and into the black market.

⁵ <https://www.gamblingcommission.gov.uk/statistics-and-research/publication/market-overview-operator-data-to-june-2024-published-july-2024> (and industry stats, link in footnote 10)

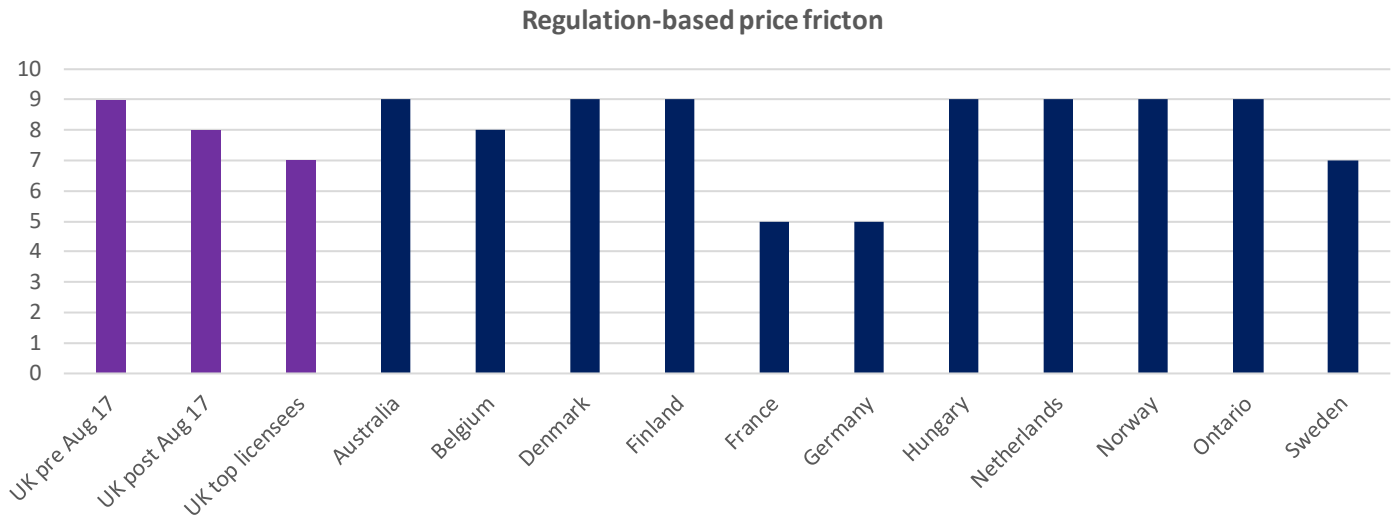
⁶ <https://www.flutter.com/investors/results-reports-and-presentations/year/2023/#docs>

⁷ <https://www.entaingroup.com/news-insights/latest-news/2023/2022-full-year-results/>

⁸ <https://www.evokeplc.com/investors/results-reports-and-presentations/>

⁹ The top 5 groups were involved in 13 of the c. 90 public enforcement actions of all types 2018- April 24 or 2.6 per group, with smaller online comprising c. 50 or 0.25 per group: <https://www.gamblingcommission.gov.uk/news/enforcement-action>

Price frictions can be ranked out of ten to create a predictor of black market potential in a similar manner to product frictions.



Source: Regulus Partners estimates

All jurisdictions in our sample create price frictions at least to some extent: by setting prices (France), taxing stakes (Germany), taxing bonuses, or restricting bonuses (Denmark, Sweden), (note, Norway, Finland and Hungary are monopoly markets, see below). Critically, Britain has moved from a high figure prior to August 2017 when only betting bonuses were taxed and prior to ‘affordability’ measures being brought in, to potentially a much lower score if stringent ‘affordability’ measures are introduced along side tax increases. The rate of channelling in Britain is therefore highly dynamic and sensitive to these policy outcomes.

Consumer choice

The final area of friction which causes black markets is if customers have insufficient choice. Official data from the Gambling Commission shows that gambling consumers average c. 3 gambling accounts each, with some consumers having materially more but c. 45% of consumers having only one.¹⁰ While the majority of jurisdictions in the sample have multiple licensees, Finland, Norway and Hungary have attempted to enforce a monopoly for at least some major products. Regulus market share analysis estimates that even the most effective monopolies can generate only c. 40% market share, creating a c. 60% black or ‘grey’ market depending upon whether the monopoly is legitimate under EU law. It should be noted, however, that both Finland¹¹ and Hungary¹² are now adopting licensing regimes because of the legal and channelling failures of monopoly practices. Customer choice in all the jurisdictions analysed is either abundant (even where restricted to a land-based presence as in Belgium) or not, meaning we use a choice index of 1 (for Hungary, Finland, and Norway) or 10 (for all others).

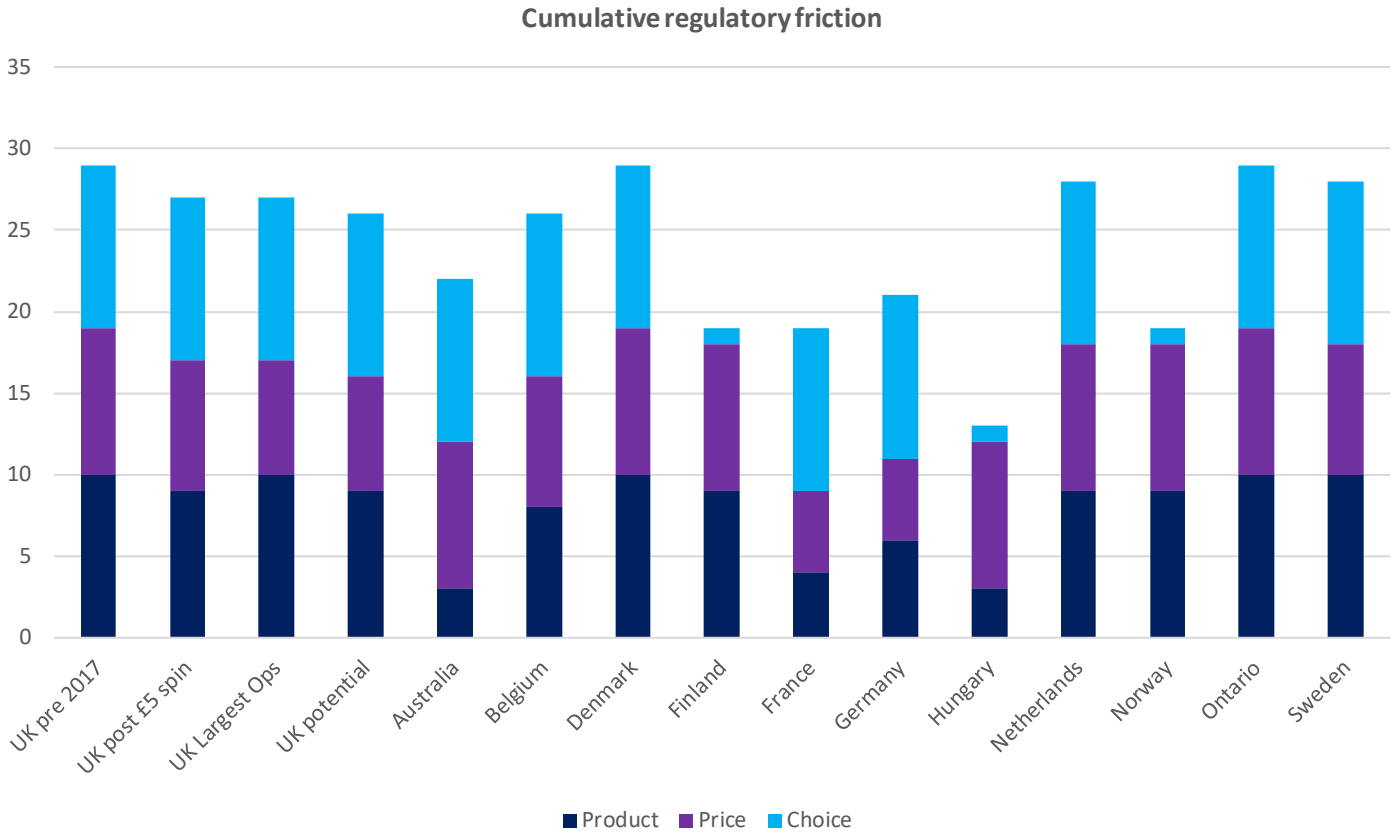
¹⁰ <https://www.gamblingcommission.gov.uk/statistics-and-research/publication/taking-a-more-in-depth-look-at-online-gambling>

¹¹ <https://igamingbusiness.com/legal-compliance/hungary-regulator-gambling-act/>

¹² <https://intermin.fi/en/projects/reform-of-the-gambling>

Cumulative consumer frictions from regulation

The three scores for the three key areas of consumer friction which lead to black markets can be combined to create a hypothetical predictor of black market scale and channelling, which we can then test against existing black market evidence.



Source: Regulus Partners estimates

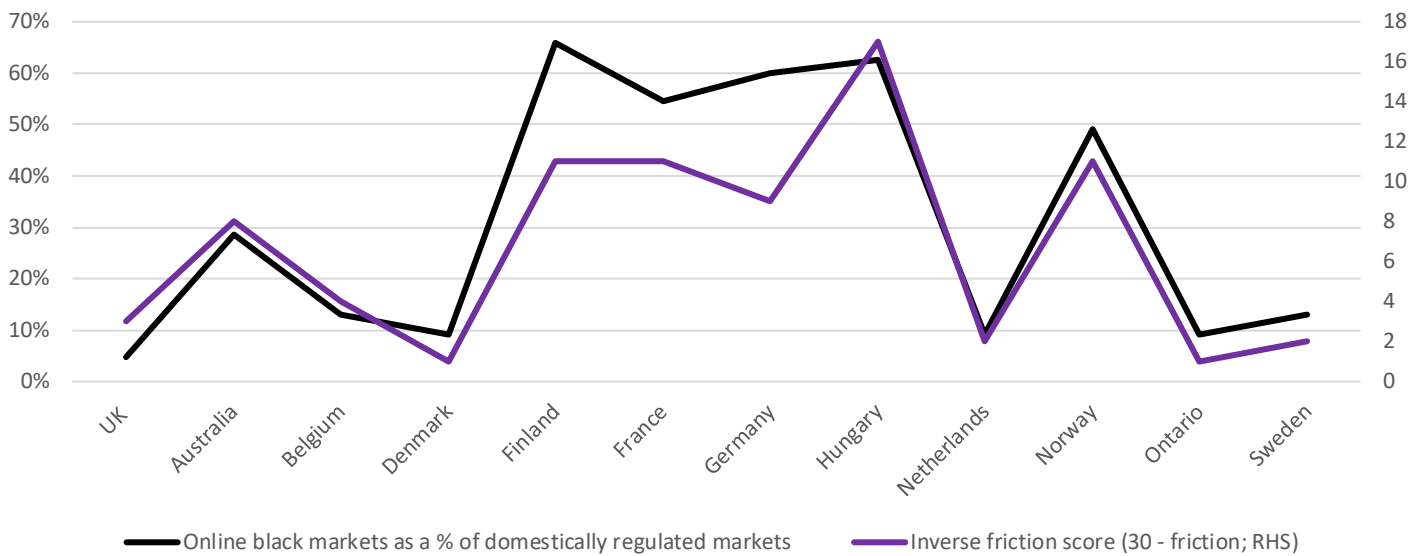
It should be noted that the cumulative impact of recent changes in Britain and the potential for more stringent ‘affordability’ checks being more widely applied means that the UK score falls from 29 out of 30 (97%) prior to 2017 to 26 going forward if all licensees are treated the same as those enforced against (87%). If no friction applies to a consumer using the black market instead of the domestically regulated offer, then the black market will simply fill the gap.

Note, the combined score is designed to show the cumulative causes and likelihood of a black market existing in a jurisdiction due to regulatory friction in a clear and simple manner, it does not predict the relative size.

Establishing the size of black markets

Because black markets are deliberately opaque, they are difficult to size. However, there are a number of methods that can be used to establish the likely size of black markets and these can be applied and evaluated across a number of jurisdictions. We provide details on how black market size is calculated for each jurisdiction in Part Three, which are largely triangulated with external, independent, or official sources. Significantly, the correlation coefficient between the regulatory sources of consumer friction identified above and the relative size of black markets identified is 0.92: high enough to logically demonstrate causation when combined with consumer behaviour insights.

Black/offshore market as a proportion of the total online market (2024 est)



Source: Regulus Partners estimates

Crucially, therefore, we can infer with a high degree of confidence that **if the level of consumer friction increases due to a change in a domestic regulatory environment, the black market will grow.**

However, despite poor rates of channelling in all markets with high rates of consumer friction caused by domestic regulation, it is not the case that regulators are powerless against black markets. In Part II we demonstrate that the combined impact of several anti-black market measures working together that cause significant friction for both consumers tempted to use the black market and for black market operators.

It is also important to understand that black markets have an absolute as well as a relative scale from a purely economic standpoint. For example, if the black market is 2.1% of British online stakes currently (as estimated by Frontier Economics), this would represent a total revenue of c. £150m – a significant figure in terms of economic potential. However, if 10% of the British online market were illegal in 2026 as a result of £5 slots limits and more widespread and stringent ‘affordability’ checks being adopted, this would represent c. £760m of revenue – a sizeable market that a large number of people and organisations would be attracted to given that it would be bigger than the entire GB land-based bingo market, for example.

Part II: Black Market enforcement tools

The cumulative impact of consumer friction establishes the demand for and therefore the scale of black markets. However, this does not mean that anti-black market countermeasures are automatically ineffective. Regulus has identified six key areas of regulatory intervention which are deployed with some level of success in international markets. When levels of consumer friction are kept to a minimum in domestically regulated markets, these measures should significantly reduce black market activity – but only if used effectively, in combination, and proactively with other regulators, law enforcement agencies, and key stakeholders.

Preventing country-targeted marketing/enforcement through media

Preventing black market operators from targeting customers in a given jurisdiction might not stop the most engaged customers from finding the products and value they want, but it will help to protect customers from accidentally exposing themselves to the dangers of black market operators. Given the scale of choice available on the internet, especially to English-speaking customers, the risk of finding black market sites by accident without enforcement are very real.

IP and app blocking/enforcement through ISPs

If black market sites and marketing affiliates are not disrupted through enforcement, then the customer journey to black markets is actively enhanced by regulatory frictions since they become a marketing tool. When black market sites are allowed to establish stable URLs, apps, and affiliate networks, they can grow their brand and reach like normal businesses. Worse, some black market sites and affiliates make a virtue of being non-compliant as a differentiator (eg, 'gamble without GamStop' in Britain), thereby deliberately targeting the very people that regulatory frictions were supposed to protect.

Payment Blocking/enforcement through PSPs

Payments are the lifeblood of online gambling. Crucially, moving money around means use of the banking system or alternative Payment Services Providers (PSPs), which in turn means financial and AML regulations. Jurisdictions such as Hungary and Norway demonstrate that payments disruption can be a highly effective means of reducing the attractiveness of offshore markets to the extent that operators are forced to withdraw. Preventing mainstream payments also increases consumer friction and therefore lowers the attractiveness of a black market offer.

Enforcing through the supply chain

Black market operators need content and technology just like domestically licensed businesses. Preventing black market operators from accessing the supply chain can create significant disruption and gives domestically licensed operators a significant competitive advantage to help mitigate other regulatory frictions. However, this must be proactively enforced to be effective.

Criminal and administrative enforcement

Prosecutions will never completely prevent criminal behaviour, but they do stop people from believing that there is easy money to be made from criminal activity that law enforcement does not seem to take seriously. Criminal enforcement therefore discourages offshore businesses from taking a chance they won't get caught, which is the fundamental basis of most black market operations.

Public blacklisting/whitelisting

A blacklist might be of little use if hard to find and not joined up with other policies. However, if combined with an easy-to-use whitelist of licensed operators and information on the dangers of black market gambling, they can provide a useful tool to consumers. Far more significantly, a blacklist can be used by gambling regulators to inform others (eg, communications regulators, financial services regulators, key stakeholders in the supply-chain, and law enforcement) of which operators to block or sanction.

Preventing country-targeted marketing and enforcement through media

Marketing through the media (mass, specialist, and social) is critical to all gambling businesses. According to Regulus estimates based on published accounts, most gambling operators spend between 20% and 50% of revenue on marketing, making it one of the largest costs. Customer cohorts are important to understanding how this dynamic works:

- the top 10% of customers will be looking for products and offers potentially through specialist content sites, but they will still be influenced by the scale and visibility displayed through advertising, direct marketing, and the use of influencers
- the mass market 90% are by far the most influenced by advertising as an engagement rather than market share decision but they are also likely to start by searching simple terms like 'best online casino' which can quickly lead to specialist comparison sites

If black market operators are allowed to market their product to customers on a relatively level playing field with licensed operators, then Regulus estimates that a 2-3% leakage is almost guaranteed since there are over 4,000 gambling operators globally while GB as the largest licensing jurisdiction by number of operators has only c. 200 active online licensees at the group level: i.e., all other things being equal a customer is more likely to find an unlicensed site than a licensed site; only intangible benefits like brand and trust provide a corrective to this if there is no friction to using a black market site. If there are also frictions to using domestically regulated sites, there is a clear danger that the exposed gamblers will be subject to potential harm through fraudulent or exploitative behaviour.

Consumers increasingly consume advertising through social media and influencers. These platforms are far more hard to monitor than mainstream media because of the sheer volume of content generated. To our knowledge no regulators have managed to curb illegal online gambling advertising through social media to date. This is a threefold problem in that: the importance of social media advertising is still growing; it provides a simple and accessible forum for more engaged users to seek out black market supply; and it increases the risk of new or occasional customers finding black market operators by accident. However, the vast majority of social media is owned by just three large companies (Meta, Alphabet and ByteDance), which means regulatory relationships and policing are possible. Britain's forthcoming Online Safety Act (OSA) requires social media and search engines to actively block illegal content. It is vital that DCMS, the Gambling Commission engages with Ofcom to ensure these powers are used to the full; if Ofcom were to classify illegal gambling as a priority, the OSA would be much more powerful. In particular, secondary legislation should be passed to classify illegal gambling products as 'priority illegal content', thereby putting illegal gambling products on the same footing as illegal financial services products.

IP - app blocking, search engine blocking, and enforcement through ISPs

The vast majority of people use the internet through search engines and apps. The providers of search engines and operating platforms have the ability to block sites and apps for commercial and legal reasons. However, when it comes to black market gambling, they typically do not use these powers.

It should be noted that there are workarounds to IP/app blocking, for example:

- the use of VPNs by customers to disguise location
- operators changing URLs, for example betnow.com, becomes betnow222.com
- operators directly communicating via telephone or text communication apps (more suitable for betting than real-time gaming since content does not need to be displayed although gaming can be displayed ostensibly in ‘free-to-play’ mode and wagered upon illicitly)

For this reason, IP blocking is not a channelling solution if a critical mass of the top 10% of customers are determined to find a workaround. However, IP blocking undermines both a one-to-many service and the ability to build a brand: workarounds cannot be easily advertised, and changing URLs actively damages brand to all but the most engaged customers. Therefore, effective IP blocking protects the 90%, goes a long way to channelling the 9%, and creates a suitable level of user friction to help channel the top 1% if they can gamble the way they want to in a regulated environment.

IP blocking should not just exist at the operator level. At the next level of harm is where search engines can be used directly to target regulatory changes and potentially more vulnerable players, for example where affiliate marketing sites promote terms such as ‘gamble without GAMSTOP’ within search engine results (and possibly terms such as ‘high value slots that accept UK customers’ when slots limits are adopted).¹³ These affiliate marketing websites rely on search engines for their business; without appearing high within the results of search engines, the business model for the website would be undermined. Further, these websites display a large number of operators which could be added to a blocked-list before being shut down, demonstrating how different enforcement tools can work together. An example of the problems of managing this issue can be seen from the fact that as of September 2024, a search for "best non gamstop betting sites" returned multiple hits, including (for example) for the marketing website 1337games.com. That site listed the following betting sites (which are not licensed in the UK) as being "without GAMSTOP":

Home » Betting Sites Not on GamStop

BETTING SITES NOT ON GAMSTOP: BEST UK NON-GAMSTOP BOOKIES 2024

If you are a sports betting fan looking to get the highest returns, then sports betting sites not on GamStop sound like your best bet. The search for reliable and safe betting sites stops so we bring you the latest in our findings from recent tests and reviews. 📌

Best Non GamStop Betting Sites 2024

1	NINEWIN Best Sportsbook	100% up to €150	<ul style="list-style-type: none"> Withdrawal time: 0-2 hours Sportsbook: ✓ Without Gamstop: ✓ 	★★★★★ VISIT SITE! >
2	RED Instant Deposit	100% up to €400	<ul style="list-style-type: none"> Withdrawal time: 0-3 hours Sportsbook: ✓ Without Gamstop: ✓ 	★★★★★ VISIT SITE! >
3	Kinghills Hot	Up to €450	<ul style="list-style-type: none"> Withdrawal time: 0-2 hours Sportsbook: ✓ Without Gamstop: ✓ 	★★★★★ VISIT SITE! >
4	R2PBET	Up to €450	<ul style="list-style-type: none"> Withdrawal time: 0-5 hours Sportsbook: ✓ Without Gamstop: ✓ 	★★★★★ VISIT SITE! >

¹³ A search engine search for ‘gamble without GAMSTOP’ is instructive of the prevalence of sites specialising in circumventing safer gambling tools and GB gambling regulation since all GB licensed operators have been required to participate in GAMSTOP since 2020 <https://www.gamblingcommission.gov.uk/news/article/online-operators-required-to-participate-in-gamstop-from-march-2020>

As with controlling social media marketing, the Online Safety Act significantly strengthens the law and regulatory powers over search engines. Search engines will be required to take steps to prevent end-users from seeing illegal content (which would include content relating to black market websites). The effectiveness of the OSA in this respect would be further improved if illegal gambling were to be classified as 'priority illegal content'. By making use of these powers, Ofcom (together with the Gambling Commission and other stakeholders) can make black market access far more onerous, far less visible, and far more clearly an act which is supporting illicit and illegal behaviour.

All websites and apps require the support of Internet Service Providers (ISPs) like BT, Sky, and Virgin to reach their customers. As with search engines, ISPs can block sensitive or illegal content, and the Gambling Commission (in conjunction with Ofcom) can do far more to encourage and equip ISPs to block sites (for example with a blacklist). The most prolific use of ISP blocking can be found in Australia, where over 1,000 websites have been blocked between the commencement of blocking by the Australian Communications and Media Authority (ACMA) in November 2019 and July 2024. Crucially, ACMA recognises that website blocking is only '*one of a range of enforcement options*', but it has helped to ensure that '*over 220 illegal services have left the market*'.¹⁴ The Danish Gambling Authority also blocked 83 illegal websites in 2023, following from 82 blocked in 2022 and a total of 359 since 2012.¹⁵

IP – app blocking and enforcement through ISPs is not a panacea, but the workarounds are narrow, specialist, far more obviously illicit, and can be monitored and enforced in their own right. As with digital media, the Online Safety Act transforms a very complex area of anti-black-market enforcement into a very powerful tool for UK regulators if used correctly.

¹⁴ <https://www.acma.gov.au/articles/2024-07/more-websites-blocked-protect-australians-against-illegal-online-gambling>

¹⁵ <https://www.spillemyndigheden.dk/en/news/danish-gambling-authority-blocks-83-illegal-websites>

Payment Blocking/enforcement through PSPs

Payment processing is the lifeblood of online gambling; without it online gambling companies could not exist either as licensed or black market operators. There are broadly five types of payment processing to consider from a consumer perspective (i.e., excluding business-to-business payments):

- direct fund transfers can be checked and verified by the bank (assuming it is onshore and takes compliance seriously)
- debit (and credit where allowed) card transactions openly flagged as gambling typically cost 3-4% of revenue over time across deposits and withdrawals (RP estimates); banks and Visa-Mastercard decide whether they can be used for gambling generally or specific transactions
- debit and credit card transactions disguised as other forms of purchase (e.g., buying flowers) get around bank and PSP checks but may be caught, fined, closed, and rarely prosecuted¹⁶
- specialist e-wallets (e.g., PayPal, NETELLER) typically cost c. 5-10% of revenue (RP estimates); the wallet provider decides use
- cryptocurrencies largely avoid banking scrutiny but come with price volatility and a complex regulatory environment especially from an AML perspective

The first two types of transfer directly involve the banking system and can be most easily policed. However, banks often have a risk aversion to gambling and as a result sometimes do not process legitimate gambling transactions for commercial risk and policy reasons; equally some lenders may take gambling as a reason to deny or modify loans and mortgages.¹⁷ These decisions often force customers to seek alternatives, which may also facilitate black market gambling. One of the most important ways in which channelling can be improved is for gambling regulators to work with mainstream banks and PSPs to ensure that legitimate gambling transactions are not blocked or penalised. To avoid these issues, disguising the nature of gambling transactions from mainstream banks and PSPs has become big business, meaning that PSP enforcement is not a panacea.

E-wallets are typically regulated and therefore can be used as an enforcement tool; gambling regulators should work closely with financial regulators and the wallet providers themselves to ensure that only legal gambling operators are being allowed, with existing legal powers covering this. The dangers of inadequate supervision over a gambling-specialist wallet and PSP were spectacularly revealed by the collapse of Germany's WireCard in 2020.¹⁸ Cryptocurrencies offer similar specialist payments solutions which can be used to avoid scrutiny. Customers should only be using specialist payment methods by choice and not because they are in effect forced to do so by mainstream banks declining to process legitimate gambling transactions.

Given these workarounds, payment blocking is not a panacea. Even though the Norwegian regulator Lottstift has been blocking local payment options since 2010 claiming '*great effect*' for the policy on its own terms,¹⁹ it still reports that 62% of calls to Norway's Problem Gambling Helpline relate solely to offshore operators, demonstrating a significant offshore market affecting the most vulnerable.

¹⁶ <https://www.reuters.com/article/technology/exclusive-fake-online-stores-reveal-gamblers-shadow-banking-system-idUSKBN19D137/>

¹⁷ For example: <https://www.onlinemortgageadvisor.co.uk/income-types/gambling-income/#:~:text=A%20history%20of%20gambling%20can,amount%20of%20money%20through%20it.>

¹⁸ <https://www.ft.com/wirecard>

¹⁹ <https://lottstift.no/en/gambling-in-norway/#:~:text=Online%20casino%20and%20sports%20betting&text=In%202010%2C%20we%20implemented%20payment,from%20abroad%20came%20into%20force.>

However, closer cooperation with banks and PSPs to ensure the guilty do not resurface while the legitimate are fairly treated can have a material effect on channelling, in our view, as recent coordinated enforcement demonstrates. The Hungarian Gambling Authority published its blacklist to Hungarian banks and restricted payments from July 2023. Customers were directly warned of friction by the regulator since *'following the restrictions, the payment of winnings from unlicensed sites will also become uncertain.'*²⁰ Significantly, following this ruling a number of operators exited Hungary according to our industry intelligence. Norway's regulator has also stepped up anti-payments enforcement, informing 37 Norwegian banks that the regulator will supervise the banks' compliance with the payments ban during 2023.²¹ A similar pattern to that observed in Hungary was seen following Norway's decision to supervise payments blocking according to our industry intelligence.

Payments blocking works similarly to many other anti-black market measures in generating a source of friction rather than simply prevention:

- the top 10% of highly engaged customers are likely to try to find workarounds, but if the friction of getting money to a black market operator is greater than the friction of gambling with a domestically regulated operator then they are far less likely to do so
- the 90% of mass market customers are likely to think twice about gambling with an operator who cannot accept mainstream payments for both trust and convenience reasons
- operators who know they have to engage in illicit payments solutions are likely to be easier to prosecute under AML laws

²⁰ <https://hungarytoday.hu/new-restrictions-strengthen-the-fight-against-illegal-online-gambling/>

²¹ https://lottstift.no/content/uploads/2024/04/Arsrapport_2023_UUweb_2404.pdf (pp 14, 17; in Norwegian)

Limiting black market access to the gambling supply-chain

All gambling operators require certain components that cannot be built in-house:

- slots content, currently provided by over 700 slots content houses globally (RP estimates)
- Live Dealer casino content, currently provided by c. 20 companies globally
- Sports results data, currently provided by c. 20 scouting and data[?] aggregation companies globally

In addition, many companies outsource other key components such as platform and more generic content for cost and convenience. While we have already demonstrated that customers bet on broadly similar product categories, there are some important regional variations. It is therefore important to black market operators that they either get access to high quality content with direct B2B contracts or through IP infringement (i.e., black market suppliers copying the characteristics of popular content). Only four of the jurisdictions covered specifically regulate key suppliers (Denmark will from 2025): Great Britain; Belgium; Germany; Ontario.

Those licensing regimes which do not regulate B2B providers exacerbate black market leakage by failing to stop the supply of content to illegal sites. However, licensing is not the same as enforcement. If a regulator lacks the industry knowledge and resources to check, and the B2B provider lacks the legal incentive to police the availability of its own content, then a B2B licensing regime offers limited practical protections. Equally, an operator might have a licence for some jurisdictions but operate illegally in others, meaning that each jurisdiction must enforce its supply chain restrictions specifically to what is available in that jurisdiction to prevent leakage. If the content and technology of a black market operator is subject to forensic analysis by a regulatory team, then it will potentially reveal:

- licensed B2B providers who need to be enforced against, thereby removing their content or services from black market operators
- unlicensed B2B providers who could face criminal sanction for breaking gambling laws, also removing their content and services from the market
- instances of intellectual property theft if unlicensed content is designed to copy the content of legitimate businesses.

Enforcing against infringements within the supply-chain can therefore cause considerable friction to black market operators, making illegal business harder. The prosecution of supply-chain providers is also likely to provide more black market operator leads by opening up their client relationships. The laws are already in place to turn such analysis into useful anti-black market activity in all the jurisdictions with B2B licensing requirements, but so far there has been little evidence of enforcement. Significantly, this may be changing in the USA, where the Michigan regulator has recently sent a questionnaire to all licensing supply-chain providers requiring details of potential black market activity.²²

²² <https://www.michigan.gov/mgcb/-/media/Project/Websites/mgcb/Internet-Gaming-and-Fantasy-Contests/SupplierForms/Final--Internet-Gaming-Attestation-4-18-2024.pdf>

Criminal and administrative enforcement

Direct criminal enforcement can include:

- issuing cease and desist orders
- fining and enforcing against businesses
- fining and imprisoning key individuals

Most direct enforcement tends to require small offshore businesses to cease trading or face further action (see Part III for examples). The basic problem with this approach is that it is relatively easy to set up another offshore limited company and start again, which appears to happen very regularly in a number of offshore gambling jurisdictions. Criminal enforcement can therefore look like a game of whack-a-mole and not appear to be successful. It should be noted that criminal enforcement has only really been partially successful in the USA with several high-profile arrests and prosecutions.

However, there are three elements to criminal enforcement which if delivered effectively can be a very powerful deterrent:

- businesses holding a licence elsewhere should be held to account and regulators should work together more closely to ensure there are international repercussions for repeat offenders
- businesses that face enforcement action should be pursued to a level that the risk-reward ratio does not stack up: warnings are unlikely to be heeded by businesses designed to circumvent the law
- key individuals often believe they are 'circumventing' the law rather than breaking it; communications and punishments should demonstrate that offering black market gambling is not a risk worth taking to earn some 'easy money'.

Britain has the benefit of being a major economy, travel connection hub, and destination. While it is possible for businesses to target Britain without any key personnel ever setting foot in British territory, this is a difficult decision to take and represents a major 'lifestyle choice'. As is the case with a large number of European regulators, the Gambling Commission includes fighting unlicensed gambling as a statutory objective and part of its current strategy.²³ The Gambling Commission is also one of the few regulators to boast an enforcement and intelligence department. However, despite having the legal framework, statutes and resources on its side, it has yet to demonstrate a proactive approach on this front. In this context, to date, Regulus is not aware of any arrests of offshore online black market operators despite Britain (London especially) being a key global travel-hub. While all black market operators should be policed and prosecuted, the absence of any more substantial offshore arrests demonstrates that the problem is being shifted rather than dealt with, in our view. Arresting criminals and closing down criminal businesses is never a panacea to prevent crime: there will always be others. However, if the operation of black market gambling businesses is made both more difficult and more dangerous, then the supply of black market gambling will logically reduce.

²³ <https://www.gamblingcommission.gov.uk/about-us/guide/page/delivering-our-objectives-and-duties#:~:text=it%20is%20difficult%20to%20provide%20illegal%20gambling%20at%20scale%20to%20consumers%20in%20Great%20Britain>

Public blacklisting/whitelisting

A blacklist is a list of operators or websites that are breaking gambling law which may be made available to the public. A blocklist is similar, but with the added element that the sites listed are blocked as well as offered as a warning of illegal behaviour. Several regulators publish a blacklist or blocked list: Australia, Belgium and Hungary in our sample, or keep one which is not publicly available (Netherlands). A whitelist is a means by which consumers can check if a website is licensed and regulated. Substantially all regulators keep a whitelist, but not always in a user-friendly manner. We discuss the value of blocking rather than simply the information that a site is compliant or non-compliant below.

Public blacklists can be used to demonstrate illegality or non-compliance to other regulators, suppliers, trade bodies, payments providers, and other key stakeholders. If a blacklisted site can be linked to an operator and/or ultimate beneficial owner, then its presence on a blacklist could be especially disruptive if the regulator communicates the blacklist effectively.

Given Australia's and Hungary's channelling rate, it could be argued that published blacklists have a limited impact. However, it should be noted that both these jurisdictions do a lot to encourage black markets by historically limiting consumer choice (Hungary) or restricting products (Australia). Given that the top 10% of customers are so engaged and generate c. 85% of revenue it is unsurprising that blacklisting sites is ineffective on its own. More significantly, when Hungary's blacklist was shared with banks, it was effectively used to support payment blocking (see below). Blacklists can therefore form an important part of a regulator's channelling tool kit if major reasons to use a black market are not present and if black lists are actionable by other stakeholders and with other enforcement measures.

Very few customers use blacklists, but this is because they are not signposted and the benefits of using a regulated site are not made clear. It is logical to assume, even though there is no clear precedent, that if consumers realised they were better protected by domestically regulated offers they would find an easy to access and visibly promoted blacklist a useful tool. The same can be said for a similarly visible and user-friendly white list.

In short, logic dictates that blacklists do not work when or if:

- market distortions are already significant
- the blacklist is hard to find or use
- blacklists of sites are not linked to operating businesses

However, if used intelligently, blacklists can assist with:

- improving customer education and resources to make safer choices
- improving domestic compliance through the supply chain
- improving international compliance in an inter-connected sector through information sharing

Blacklists should therefore be part of a regulator's channelling tool kit, but they need to be actively managed as a tool rather than simply sit as a list. International experience shows they will also only nudge customer behaviour, they will not fundamentally change it. Nevertheless, blacklists provide a simple and practical tool that is easy to implement and can be integrated with other measures.

Black market deterrents: providing cumulative friction

Regulus has identified six material anti-black market measures, many of which have had proven efficacy in some jurisdictions, especially when combined with others, and all of which have a logical place in increasing friction for both customers and operators in the black market:

- preventing targeted marketing
- IP - app blocking, search engine blocking, and enforcement through ISPs
- Payment Blocking/enforcement through PSPs
- limiting black market access to the gambling supply-chain
- criminal and administrative enforcement
- blacklisting/whitelisting

None of these measures is a silver bullet, meaning they will not completely prevent black markets. Equally, many of these anti-black market have been tried in isolation, ineffectively, or they have been used to mitigate extremely large amounts of regulatory friction pushing customers the other way. Finally, it is difficult to measure cause and effect in isolation, especially on such deliberately opaque operations. Consequently, while the causes of black markets can be effectively enumerated, a quantitative impact assessment on countermeasures is impossible. However, the absence of prevention or proven outright success does not undermine the evidence that each of these measures has a regulatory role, especially if used in combination and rigorously enforced:

- preventing targeted marketing mitigates mass market engagement with black market brands, protecting c.90% of the player-base even if most of the revenue remains vulnerable
- IP, app, search engine and ISP blocking increases friction to higher value players as well as the mass market, while also forcing black market operators into engaging with more obviously illicit marketing and contact activities that can help alert players to risk
- payments blocking works in a similar way to IP, app, search engine, and ISP blocking in terms of friction with the added benefit that banks and financial services regulators can act as even more powerful deterrents due to AML implications and the dangers of not getting paid
- limiting black market access to the supply chain protects licensed operators' competitive advantage through localised, high-quality product while also potentially offering a multiplier-effect to enforcement, since one illicit supplier is likely to be providing services to many black market operators
- criminal enforcement ensures that businesses do not fall into the trap of thinking that offering black market gambling is an easy way to make money and a consequence-free crime
- blacklists aid customer awareness and especially help enforcement with other parts of the value chain such as internet content publishers, internet service providers, banks, and the gambling supply chain

Perhaps most significantly, the evidence shows that a regulatory regime which is prepared to increase consumer friction to using domestically licensed supply, but which does not try to use all powers to increase friction to using and operating in the black market is doomed to fail.

Part III: International Black Market Enforcement summary

Best practice lessons - Australia

Australia proves two key points in how black markets function and how they can be controlled:

- Banning or heavily restricting products creates large black markets regardless of legal and regulatory enforcement
- Notwithstanding a continuing large black market, Australian authorities have had material success in stopping large numbers of operators and suppliers from entering the market, demonstrating that ISP blocking, targeted advertising restrictions, and a credible threat of criminal enforcement can work even if it is hard to measure

Best practice lessons - Belgium

Belgium demonstrates three lessons:

- the fact that a domestically regulated market is growing does not mean that the risks of black market leakage are not also growing
- a blacklist used in isolation is not an especially effective tool
- if a regulator is not able to be fully supported by other stakeholders (communications regulators, banks, law enforcement), then it is unlikely to optimize black market enforcement even with considerable theoretical powers

Best practice lessons - Denmark

Denmark highlights three considerations for anti-black-market best practice:

- laws need to be clear and efficient in what they are prohibiting; since the burden of proof is on the Danish regulator to show that sites are targeting Danish citizens and not just accepting deposits from them, the Danish system generates a lot of court cases
- website blocking does not prevent black markets, but it might limit black market traction with tighter laws
- cooperation between the gambling regulator and media stakeholders is possible

Best practice lessons - Finland

After over twenty years of attempting to defend its monopoly structure, Finland is now adopting a more liberal licensing regime. Finland therefore demonstrates that when consumer frictions become too severe through regulatory structures, giving customers a more enjoyable and workable experience is vital to effective channeling.

Best practice lessons - France

The significant scale of the French black market, even by official measures, clearly shows that tough enforcement measures have little effect once consumer friction is sufficiently great. France also shows that extensive legal and regulatory powers are not on their own sufficient deterrent, especially once a black market is of sufficient size to be attractive: anti-black market measures need to be coordinated and enforced to be effective.

Best practice lessons - Germany

Germany's best practice lessons are fourfold:

- high levels of consumer friction in the regulated market create large black markets regardless of enforcement
- enforcement mechanisms that do not concentrate on and provide effective solutions for the offshore nature of black markets are structurally ineffective
- complex relationships between regulatory and law enforcement stakeholders created by an equally complex rules-based system undermine rather than enhance enforcement
- nevertheless, cooperation between the regulator and Google has yielded significant results in reducing the visibility of black market operators in Germany, albeit the change in rules several years after market regulation also demonstrates that this cooperation has to be pro-active and enforced to achieve results

Best practice lessons - Hungary

Like Norway, Hungary has demonstrated that targeted enforcement using a blacklist, payments blocking, and regulatory cooperation with the banking sector can be highly effective at disrupting offshore supply. However, unless and until Hungary removes consumer frictions to using its forthcoming domestically regulated market by ensuring minimal product and price distortions as well as adequate consumer choice, a black market in Hungary is likely to prove resilient in the longer term, in our view.

Best practice lessons – the Netherlands

The Netherlands demonstrates that increases in consumer friction caused by tightening regulation increases the use of the black market even when the regulator uses enforcement powers. However, the new chairman of the Dutch regulator has already made it clear that enforcement measures against the black market need to be tougher and tighter.²⁴ The KSA takes black market threats very seriously and monitors channeling closely, which is a key best practice takeaway

Best practice lessons - Norway

Norwegian enforcement action demonstrates that specific operators can be disrupted and potentially forced to exit due to a combination of direct legal pressure and business disruption through website and payments blocking. However, the experience of other jurisdictions also shows that other operators are likely to fill the gaps left by those who are forced to leave. International experience shows that only by reducing consumer friction by providing adequate choice can Norway increase channeling significantly.

Best practice lessons – Ontario

Ontario has not yet materially enforced against the black market. However, Ontario's limited consumer frictions are achieving relatively high rates of channelling even in a new market.

²⁴ <https://next.io/news/regulation/ksa-chair-groothuizen-vows-crackdown/>

Best practice lessons - Sweden

Sweden illustrates the fact that optically small restrictions such as the inability to offer customer bonuses or even short-lived consumer spending frictions such as the Covid-19 deposit cap on online casino can have a material impact on channeling. Like Denmark, Sweden is also hampered by laws which do not clearly criminalize accepting deposits from Swedish customers, instead focusing on the more subjective definition of 'targeting'. When even relatively liberal regimes introduce customer frictions in the regulated market while failing adequately to tackle the black market with countermeasures, a material black market can emerge. Sweden clearly demonstrates that it is not unreasonable to assume that if further regulatory frictions are introduced in Britain and the black market threat is not taken seriously, a black market of over 10% is not just possible, but likely, in our view.

Best practice lessons - Britain

The Gambling Commission has been highly active in disrupting URLs, websites, and affiliates. However, the continued presence of a large number of black market sites and the growth in black market usage by British consumers shows that these countermeasures have had limited effect. The Gambling Commission has powers of prosecution and regulatory referral to other agencies that are not being used to full effect. The Online Safety Act strengthens the ability to police the internet against black market gambling in theory, but it will have little impact in practice if law enforcement agencies and regulators do not coordinate and if black market gambling is not seen as an enforcement priority.

On the current pattern of increasing consumer friction in the domestically regulated market while little is done to prevent black market leakage, international experience shows Britain's illegal gambling leakage could more than double. At 10% black market leakage, which is still lower than that of Sweden, a £700m criminal sector will be created and millions of British consumers will be unprotected.

Australia

Australia acts as an example of a jurisdiction with rather consistent active enforcement and some successful deterrents against black market operations, including such relating to criminal enforcement against individuals (it is possible to add directors to the border protection agency's Movement Alert List making travel to Australia problematic), which, based on our industry insights, we know motivated many unlicensed operators and suppliers to stay clear of the market.²⁵ Australia also tends to feature as a restricted territory for larger operators and service providers, yet the degree to which restrictions are policed and enforced may differ and we are aware that many Curacao-licensed gambling and crypto operators in particular still target the market. Australia's fragmented regulatory framework between states and federal government, ban on casino gaming, and restrictions on online in-play betting create substantial consumer friction, creating significant reasons for a black market to exist.

Enforcement tools available by law

The federal Interactive Gambling Act 2001 (IGA)²⁶ was designed to apply extraterritorially²⁷ and prohibits the provision and advertising of online gambling services with an Australian customer link. Following criticism that the legislation was ineffective in deterring unlicensed offshore gambling operators from providing services to Australian residents, the IGA was amended in 2017²⁸ to increase penalties, expand existing aiding and abetting offences and to provide the primary enforcement body, the Australian Communications and Media Authority (ACMA), with broader enforcement tools.²⁹ Today, the ACMA has the power (but also partly obligation)³⁰ to respond to breaches of the law by:

- Investigating matters on its own initiative or in response to a complaint, Section 21 IGA;
- Issuing formal warnings in case of rule breaks to encourage rectification, Section 64A IGA;
- Issuing infringement notices, Section 64C IGA;
- Obtaining injunctions in relation to civil penalties, Section 64D IGA;
- Referring the offending company to police or the Director of Public Prosecutions, Section 21 IGA;
- Reporting the directors and principals of offending companies to Australia's border protection agency who may place them on the Movement Alert List, which can disrupt travel to Australia;³¹

²⁵ We are eg, aware of an enforcement initiative taken in 2018, when the AMCA approached a number of operators and suppliers, informing/reminding of the prohibitions and potential consequences of unlicensed operations.

²⁶ See Interactive Gambling Act 2001, <https://www.legislation.gov.au/Series/C2004A00851>.

²⁷ See Section 13 and 14 IGA.

²⁸ See Interactive Gambling Amendment Act 2017, <https://www.legislation.gov.au/Details/C2017A00085>. The later amendment of the IGA, in 2019, did not concern enforcement against black market operators but set the basis for a national self-exclusion register to be introduced.

²⁹ Other regulatory enforcement takes place at state/territory level. The regulatory bodies' enforcement powers vary between the states and territories. In general, state and territory regulators also have broad investigatory and enforcement powers and can commence civil and criminal proceedings. Even though individual states/territories have sent out letters/reminders to operators and suppliers to protect their territories from illegal offerings in the past action against the blackmarket overall, however, is less likely to be taken by state/territories, given that it is mainly the ACMA who are entrusted with the responsibility of enforcing against the blackmarket.

³⁰ Section 24 of the IGA is drafted as a "must" provision, therefore making it mandatory for the ACMA to act, namely, to refer the matter to a law enforcement agency and ISP as relevant, if it is satisfied that internet content is prohibited internet gambling content.

³¹ See <https://www.acma.gov.au/investigations-online-gambling-providers>.

- Requesting internet service providers (ISPs) to block access to illegal online gambling websites in Australia, Section 24 IGA;
- Giving directions to an ISP to apply an industry code mandatorily, Section 42 IGA, and issue formal warnings in case of contraventions, Section 43, 49 IGA;
- Make, vary or revoke an industry standards id there is no industry code or if an industry code is deficient, Section 44, 50, 51 IGA;
- Apply to the Federal Court for a cease-and-desist order for supplying internet carriage services, Section 59 IGA.

Anyone who breaks the rules, or aids and abets this, may face criminal charges and/or civil penalties. Australia considered the introduction of payment blocking measures³² but ultimately opted against their introduction in the 2017 amendment of the IGA.

Enforcement tools used in practice

The ACMA is demonstrably active in investigating complaints of breaches of the IGA and reports on their enforcement activities every quarter and annually on its website.³³ According to the latest reports, blocking measures have been the most common enforcement tool used by the ACMA. A full list of the blocked websites can be accessed on the ACMA's website.³⁴

Establishing black market size

Regulus Partners estimates the online gambling black market in Australia to be c. £1bn, or 29% of the total online market. While there are no official estimates, the fact that ACMA is constantly finding and blocking websites demonstrates a continued targeting and appetite. Australia is also one of the most digitally adopted consumer societies that has displayed an enduring appetite for gambling; it is likely that our illegal gambling estimates are conservative, in our view. If Australian consumer expenditure on online gaming benchmarked other jurisdictions with a strong horseracing offer, gaming would be c. 50% vs. 29% of online mix. It is tentatively possible to put the difference (£1.5bn) down to Australia's enforcement action against the black market, making it a considerable if hard to measure relative success.

Best practice lessons

Australia proves two key points in how black markets function and how they can be controlled:

- Banning or heavily restricting products creates large black markets regardless of legal and regulatory enforcement
- Notwithstanding a continuing large black market, Australian authorities have had material success in stopping large numbers of operators and suppliers from entering the market, demonstrating that ISP blocking, targeted advertising restrictions, and a credible threat of criminal enforcement can work even if it is hard to measure

³² See [2016 Review of Illegal Offshore Wagering](https://www.dss.gov.au/sites/default/files/documents/04_2016/review_of_illegal_offshore_wagering_18_december_2015.pdf) and [Australian Government's response to the Review of Illegal Offshore Wagering](https://www.dss.gov.au/sites/default/files/documents/04_2016/government_response_review_illegal_offshore_wagering.pdf), https://www.dss.gov.au/sites/default/files/documents/04_2016/review_of_illegal_offshore_wagering_18_december_2015.pdf, https://www.dss.gov.au/sites/default/files/documents/04_2016/government_response_review_illegal_offshore_wagering.pdf.

³³ See <https://www.acma.gov.au/action-interactive-gambling>.

³⁴ <https://www.acma.gov.au/blocked-gambling-websites#list>.

Belgium

Belgium has been considered to have a high channelization rate for years and is known for its strict enforcement. In comparison to other jurisdictions, the actual enforcement activity, however, does not really stand out as particularly/unusually high. Interesting about Belgium further is that, despite the legality of its regulation having been criticized for violating EU law, this does not seem to have impacted on the jurisdiction's enforcement appetite/success (unlike elsewhere, e.g., in Germany). While a near-total ban on marketing and a restriction in deposits to €200 per account per month has already taken place with limited impact on overall growth (note, customers can work around the restriction with multiple accounts), from September 2024 customer bonuses have also been banned. The cumulative impact on these restrictions therefore risk reducing the rate of channeling over time, in our view.

Enforcement tools available by law

The legal basis for any enforcement action taken by the Belgian Gambling Commission is the prohibition on offering unlicensed games of chance to the Belgian public, as set out in Article 4 (1) of the Gaming Act of 7 May 1999 (the Gaming Act).³⁵ The Gaming Act is designed to have extraterritorial effect and the mentioned prohibition is also criminally sanctioned.³⁶

The Belgian Gambling Commission's enforcement powers include:

- Issuing warnings, Article 15/2 (1)
- Initiating public prosecution or an administrative sanctioning procedure, Article 15/2 (3)
- issuing administrative fines (€100 to €100,000, and/or imprisonment for between six months and five years)³⁷, Art. 15/1, !5/3.
- Maintaining a list of illegal gambling sites.³⁸

Enforcement tools used in practice

The Belgian Gambling Commission appears to make use of all enforcement powers offered to it by law to combat illegal online offerings. According to its last annual report,³⁹ the Gambling Commission approached 141 website operators in 2022, of which 108 complied with the request to cease operations voluntarily. In relation to those operators which were approached but did not respond to the Gambling Commission, websites were added to the blacklist and the matters notified to the public prosecutor's office. In total, 98 new websites were added to the blacklist in 2022 (in 2023 this so far has been 10), which now includes 428 entries in total.⁴⁰ In relation to the 98 websites added to the blacklist in 2022, the Gambling Commission confirmed in its annual report that sanction procedures were initiated with a view to imposing administrative fines. The report further mentions 23 other sanction proceedings against foreign operator, of which by the end of 2022, 18 procedures were completed and led to a total of €1.4m in administrative fines being imposed.

³⁵ See <https://www.gamingcommission.be/nl/wetgeving/kanospelwet-7-mei-1999>.

³⁶ See Article 63 Gaming Act: persons in breach of Article 4 (1) are liable to imprisonment for a period of six months to five years and a fine of 100 francs to 100,000 francs, possible double according to Article 65 in case of repeat offences. or one of these sanctions.

³⁷ Art. 4 (1), 63 Gaming Act of 7 May 1999.

³⁸ For the current list, see <https://www.gamingcommission.be/en/gaming-commission/illegal-games-of-chance/list-of-illegal-gambling-sites>.

³⁹ See https://www.gamingcommission.be/sites/default/files/2023-05/KSC_2022_jaarverslag_NL_0.pdf.

⁴⁰ See <https://www.gamingcommission.be/nl/kanospelcommissie/illegale-kansspelen/lijt-illegale-goksites>.

The Belgian Gambling Commission, however, states on the consumer information section of its website that, if it receives a complaint about an illegal site, it “*cannot do anything except add this site to the list of illegal gambling sites*”, which may suggest that the Gambling Commission possibly considers the blacklist to be its most effective enforcement tool. It is also noteworthy that the Gambling Commission combines this information with a reminder to the players that gambling on an illegal gambling site is punishable by law (€26 to €25,000, and/or imprisonment for between one month and three years) and that it encourages players to look out for the “Always Play Legally” logo, which only licensed operators may use. Neither the use of the logo nor illegal participation seem to be actively enforced, however. Our industry intelligence also suggests that while black market websites might appear on the black list, they are often not blocked by ISPs, while offshore operators can ignore Belgian court rulings.

Establishing black market size

Regulus Partners estimates the size of the Belgian online black market to be £111m, or 13% of the total market. A survey carried out by Nepa in June 2023 on behalf of the Belgian Association of Gaming Operators (BAGO) found that 20% of players interviewed used black market sites and that 16% of online consumer expenditure went to illegal operators.⁴¹ Based on this evidence, Regulus estimates for the size of the Belgian black market are therefore potentially conservative.

Best practice lessons

Belgium demonstrates three lessons:

- the fact that a domestically regulated market is growing does not mean that the risks of black market leakage are not also growing
- a blacklist used in isolation is not an especially effective tool
- if a regulator is not able to be fully supported by other stakeholders (communications regulators, banks, law enforcement), then it is unlikely to optimize black market enforcement even with considerable theoretical powers

⁴¹ <https://gamblingclub.be/en/illegal-gambling-in-belgium-a-growing-menace/>

Denmark

Despite direct enforcement powers of the Danish regulator being limited and Denmark being far less aggressive in enforcement against the black market overall in comparison to other jurisdictions, channelization remains relatively high. It thus shows that the success of regulation does not depend on enforcement alone but on how attractive the regulation is overall (for both players and industry), which will be influenced by a number of different factors, eg., product/licence availability, tax regime, restrictions being evidence-based etc.

Enforcement tools available by law

The Danish Gambling Act (in combination with the Criminal Code) sets out serious sanctions for illegal operations and advertising.⁴² However, the Danish Gambling Authority (Spillemyndigheden, DGA), which is entrusted with supervising the compliance with the Danish Gambling Act⁴³ has no jurisdiction to issue fines or apply blocking measures directly for such violations. That being said, the DGA does have authority to issue warnings and request corrective action and/or to report the matter to the police for the police to take further action (including the issuance of fines or forwarding to prosecution services). In addition, it may ask the district court to issue an ISP block of an unlicensed website and the Danish Gambling Act sets out that payment service providers (PSP) must not process electronic payment transactions to or from unlicensed gambling operators.⁴⁴

The DGA also may exchange necessary information with the customs and tax administration, other public authorities as well as foreign authorities for the purpose of supervision.⁴⁵

Enforcement tools used in practice

The DGA will only enforce against operations which are not licensed in Denmark if these target Danish players. Websites are considered to be targeted at Danish players if:

- they are available in Danish language;
- display Danish currency;
- offer payment options that only work in Denmark;
- they have a Danish customer service;
- the video game platform Steam is possible to use for login;
- dropdowns or similar mentioning Denmark, Danish etc. are used in the registration process;
- they include gambling offers that are directly aimed at the Danish market due to their composition (e.g., use of Danish flags, other typical Danish symbols, reference to Danish holidays etc.).

Separate to that, direct marketing to Danish players is also considered targeting the Danish market.

⁴² Section 59(1), (3) Gambling Act, <https://www.retsinformation.dk/eli/lta/2020/1303>: net-turnover based fine or imprisonment for up to six months-1 year for unlicensed operations; Section 203(1) Criminal Code: net-turnover based fine or imprisonment for up to one year for unlawful advertising;

⁴³ Section 46 Gambling Act.

⁴⁴ Section 65 Gambling Act.

⁴⁵ Section 49(1) Gambling Act.

In 2023, the Danish Gambling Authority carried out various searches for illegal gambling websites and had 49 websites with illegal gambling blocked, down from 82 in 2022. It reported 27 illegal websites to the police for further action in 2022, not least as all of these instructed players on how to circumvent identity verification and matches against the central player self-exclusion database ROFUS and hence meant significant concern for the protection of consumers. In 2023 only one major operator was reported to the police⁴⁶

In its 2023 report on illegal gambling, the DGA highlighted further collaborations with Google, Facebook, and Apple, as well as streaming supervision with Twitch and YouTube, Facebook and Kick, which showed an absence of illegal content during the monitoring period. While these collaborations are welcome and sensible, it is not clear exactly how they are lowering black market usage.

Establishing black market size

Regulus Partners estimates the size of the Danish online black market to be £46m, representing 9% of the total online market. An official survey conducted for the Danish Gambling Authority published in January 2024 showed 3.8% of respondents gambling with unlicensed sites and 8.6% unsure.⁴⁷ Given that those gambling with unlicensed sites are likely to be higher spending customers, the Danish survey data triangulates with Regulus estimates of financial leakage.

Best practice lessons

Denmark highlights three considerations for anti-black-market best practice:

- laws need to be clear and efficient in what they are prohibiting; since the burden of proof is on the Danish regulator to show that sites are targeting Danish citizens and not just accepting deposits from them, the Danish system generates a lot of court cases
- website blocking does not prevent black markets, but it might limit black market traction with tighter laws
- cooperation between the gambling regulator and media stakeholders is possible

⁴⁶ <https://www.spillemyndigheden.dk/uploads/2024-04/Report%20on%20illegal%20gambling%202023.pdf>

⁴⁷ https://www.spillemyndigheden.dk/uploads/2024-01/Danes%20largely%20gamble%20on%20sites%20with%20a%20Danish%20licence_0.pdf

Finland

Enforcement in Finland (one of the last true monopoly regimes in Europe) used to be limited and focused on ensuring compliance of the monopolist, not on combatting unauthorized operations or advertising, which made for a significant market share. This only started to change recently in the context of the Lotteries Act reform of 2022, most notably by resources of the National Police Board being increased to bolster illegal marketing-related enforcement and additional enforcement tools being introduced, namely the power to issue administrative penalties and payment blocking. The jurisdiction is now also contemplating the introduction of a licensed gambling market. This may lead to Finland further amending its enforcement approach to ensure an organized market launch once legislative plans materialize.

Enforcement tools available by law

The National Police Board (NPB) is responsible for monitoring the provision and advertising of gambling in Finland, which is reserved for the state-monopoly.⁴⁸ Unlicensed operations or marketing qualify as administrative and criminal offences.

The NPB may:

- send a request for information to the gambling operator, Section 44
- make a request for investigation to the police
- issue a prohibition decision (bans are valid for a maximum of 12 months, extendable by 12 months for illegal operations and for 3 months, extendable by 3 months for illegal marketing until the violation is corrected)⁴⁹
- impose a notice of a conditional fine to reinforce the prohibition (amount of fines is not defined)⁵⁰

Since January 2023, the NBP may further resort to payment blocking measures, namely it can issue a prohibition to payment service providers for processing unlawful transactions, which are valid for 12 months at a time.⁵¹

Enforcement tools used in practice

The NPB appears to slowly be starting to take a more active approach to enforcement against the black-market. It currently prioritises enforcement against illegal marketing activity targeted at Finnish players, particularly making use of fines.⁵² It has also published a list of payment blocks on its website.⁵³

Further, the NPB launched an awareness campaign “No Limit” about what is legal and what is illegal also among marketers and potential marketers and thus create a preventive impact to draw attention to the potentially harmful effects of illegal advertising and specifically also to reach young persons and encourage reporting of illegal offerings.⁵⁴

⁴⁸ Section 11 Lottery Act.

⁴⁹ Sections 62 a and b Lottery Act, <https://www.finlex.fi/fi/laki/ajantasa/2001/20011047#L9P62>.

⁵⁰ Section 62 c Lottery Act.

⁵¹ Art. 62m Lottery Act as amended, <https://www.finlex.fi/fi/laki/alkup/2021/20211284>.

⁵² Most recently eg, a € 2.4m fine against Betsson, <https://poliisi.fi/en/-/national-police-board-prohibits-gambling-operator-from-marketing-gambling-services-in-finland-with-eur-2.4-million-conditional-fine>.

⁵³ See NPB’s website, <https://poliisi.fi/en/blocking-payment-transactions>.

⁵⁴ See NPB’s website, <https://poliisi.fi/en/nolimit>.

Establishing black market size

The Finnish offshore market has historically been more 'grey' than black because of EU challenges to the monopoly and a historical lack of enforcement. Regulus estimates the Finnish offshore market is c. £523m, or 66% of the total market. Regulus estimates are based on analyzing the trading data of a number of Scandinavian public companies that break down regional revenue.

Best practice lessons

After over twenty years of attempting to defend its monopoly structure, Finland is now adopting a more liberal licensing regime. Finland therefore demonstrates that when consumer frictions become too severe through regulatory structures, giving customers a more enjoyable and workable experience is vital to effective channeling.

France

France acts as an example of a hybrid regulatory model of a jurisdiction which, while offering licensing opportunities for private online sports betting and poker operators, maintains a ban on online casino. Consequently, it has a somewhat low channelisation rate. Enforcement activity against the black-market overall has been limited despite extensive legal and regulatory powers.

Enforcement tools available by law

The national gambling regulator responsible for online licensing and enforcement against websites unlawfully targeting French customers, L'Autorité nationale des jeux (ANJ),⁵⁵ has the powers to:

- order internet service providers and hosting providers to block access to reported websites and search engine operators to stop referencing them, Article 61 of the Online Gambling Law (possible since 2022, powers were granted through the "Law for the democratisations of Sport in France").⁵⁶
- propose that the Ministry of Finance/Minister of the Interior impose measures for blocking financial flows (for a renewable periods of six months), Article L563-2 Monetary and Financial Code.⁵⁷
- Sanction unlicensed online gambling operators – operators face three years' imprisonment and a €90,000 fine. These penalties are increased to seven years' imprisonment and a fine of €200,000 when the offence is committed by an organised crime group, Article 56 Online Gambling Law.

Enforcement tools used in practice

To assess whether an operator targets French customers, certain criteria will be taken into account, in particular ANJ will verify whether:

- the website is registered with a .fr domain name;
- drafted in the French language; and
- whether the offered services are blocked for French users or presented in a manner that appears to specifically target French users (eg, French phone number, customer support, national symbols etc.)

Usually, any application of the above-mentioned enforcement measures will be preceded by the ANJ sending a prior formal warning/notice requesting the operator to cease the illegal activity. In some cases, this suffices to achieve the enforcement goal. The ANJ publishes a list of sites that have been subject to administrative blocking.⁵⁸ Since 2022, where the first administrative blocking and delisting order was issued more than 150 orders have been executed and more than 532 websites and URLs of illegal gambling and betting were blocked.

Establishing black market size

Regulus Partners estimates the size of the French online black market to be £2.1bn, or 55% of the total online market. This estimate is c. 50% higher than the upper estimate of the French gambling regulatory (ANJ) because Regulus believes the regulator has under-estimated the impact of higher spending customers within the black market. However, even the lower estimates of the regulator demonstrate a significant black market and very high levels of leakage (c. 29%).

⁵⁵ For ANJ's website, see <http://anj.fr/english>.

⁵⁶ See <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022204510>.

⁵⁷ See https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000020196747.

⁵⁸ <https://anj.fr/lanj-publie-la-liste-des-sites-ayant-fait-lobjet-dun-ordre-de-blocage-et-de-dereferencement>.

Best practice lessons

The significant scale of the French black market, even by official measures, clearly shows that tough enforcement measures have little effect once consumer friction is sufficiently great. France also shows that extensive legal and regulatory powers are not on their own sufficient deterrent, especially once a black market is of sufficient size to be attractive: anti-black market measures need to be coordinated and enforced to be effective.

Germany

Germany is a jurisdiction which, prior to the recent overhaul of its gambling regulatory regime, struggled with effective enforcement, at least as regards the enforcement of the previous total ban on online gaming.

Two of the main reasons for this were that gambling regulatory enforcement (both administrative and criminal) used to fall under the responsibility of the individual state regulators and prosecutors (which each only had jurisdiction over their state territory) and that the legality of Germany's online gambling regime including any related enforcement action was seriously called into question due to it arguably contravening European law. This led to a highly fragmented and questionable application of the law, limited enforcement overall and year-long legal disputes in court between operators and regulators. It is of note that this was different in a gambling-related taxation context where German prosecutors were able to rely on federal laws that applied separately and unaffected by the uncertain regulatory regime (due to taxes being applicable and enforceable irrespective of the taxable gambling operations being operated legally or not) in their enforcement. Most notably, in 2018, announcements of planned (criminal) enforcement for tax violations by German prosecutors lead to multiple offshore operators ceasing operations and/or filing voluntary self-disclosures in an attempt to escape criminal prosecution of their directors (German criminal law only pertains to individuals, not entities).

The example of Germany therefore shows the importance of a carefully balanced, considered and evidence-based approach when drafting regulation for effective enforcement, and developments will be worth monitoring, not least as studies already cast significant doubts over the success that the newly introduced German regulation will have given its many restrictions and high barriers to regulated market entry, which could foster the black market.⁵⁹

Being among the jurisdictions reviewed which only recently introduced online gaming related licensing regimes, Germany also lends itself to some conclusions on how to successfully/unsuccessfully manage a transition from unregulated to regulated. Problematic in Germany's approach were mainly three things:

- significant consumer friction is built into the regulatory model with price distortions caused by taxes on stakes and product limitations (in-play betting and especially most gaming products)
- Lack of transparency and uncertainty as to the legal quality and level of protection offered by the "toleration regime" that was introduced;
- The central regulator not being set up and ready to take on the new responsibilities from the beginning of the market opening but only 18 months later.

⁵⁹ See e.g., the Goldmedia study of 2021, which predicts a black market of more than 50% and attaches significant importance of gambling-related taxation to the success/failure of the market opening, concluding that the planned regime (which was adopted) could result in an additional 31% of players deciding to play on the black-market rather than with regulated offerings, <https://www.goldmedia.com/aktuelles/info/article/mit-neuer-einsatzsteuer-auf-online-spielautomaten-werden-rund-50-prozent-der-nutzung-voraussichtlich/>.

Enforcement tools available by law

The Interstate Treaty on Gambling 2021 (IST2021),⁶⁰ in section 9, grants the newly created central gambling regulator, the Joint Gambling Authority of the German States (Gemeinsame Glücksspielbehörde der Länder, GGL) the following main enforcement powers, in relation to black market operations and advertising:

- undertake investigations into potential violations of the Interstate Treaty 2021 and initiate formal cease-and-desist proceedings against
- take payment-blocking measures
- issue internet protocol (IP) address blocking orders against internet service providers (ISPs).

In addition, the operation, advertising of and participation in unlawful gambling remain criminal offences, punishable by fine or imprisonment from 3 months-5 years (or up to 1 year for advertising).⁶¹ This means that the GGL can refer cases to the prosecution services, but prosecutors may also initiate investigations at their own initiative.

Also of note is that German regulators have been granted broad investigative powers including eg.,, such allowing them to mystery shop and/or create alias profiles to review online content⁶². Further, they shall cooperate with regulators of other EU/EEA Member States, local law enforcement authorities, and other authorities such as the state media authorities, the Federal Network Agency, the Federal Financial Supervisory Authority and the Federal Cartel Office.⁶³

Enforcement tools used in practice

The GGL only fully resumed its role as the central gambling regulator on 1 January 2023 but has been organizing black-market related enforcement since 1 July 2022. Detailed official reports about enforcement tools used have not been published to date, however, in a statement of 11 January 2023⁶⁴ the GGL reported that approximately 1150 websites were checked, an approximate 150 cases of unlawful operations and a further 150 cases of unlawful advertising were identified and “multiple” of these unlawful operations/advertising were removed without further intervention after the GGL made contact with the operators. In addition, 60 formal cease-and-desist proceedings were initiated, and 30 criminal complaints were filed by the GGL with the prosecution. The GGL further mentioned that it has noticed payment service providers and ISPs withdrawing from working with unlicensed operators and that it has initiated six proceedings to enforce payment/website blocking.⁶⁵ While legal disputes questioning the legality of the blocking orders are pending, the GGL emphasizes that 2 courts already confirmed the legality in summary proceedings. In the June 2024 interim evaluation, the GGL made it clear that ISP blocking needs to be included in the renewal of the Inter-State Treaty on Gambling to become effective, with IP blocking remaining unused.⁶⁶

Ambitions set in 2023 included getting across that illegal gambling will not be worth-while by making anyone not listed on the regulator’s whitelist a target of enforcement. Additionally, the GGL advocated for the introduction of a specialised prosecutor’s office at the location of the GGL to speed up criminal

⁶⁰ See https://www.gluecksspiel-behoerde.de/images/pdf/201029_Gluecksspielstaatsvertrag_2021.pdf.

⁶¹ Section 284, 285 Criminal Law, https://www.gesetze-im-internet.de/englisch_stgb/index.html.

⁶² Section 9 (2a) IST2021.

⁶³ Section 9 (3), (3a) IST2021.

⁶⁴ <https://www.gluecksspiel-behoerde.de/de/news/234-ggl-geht-an-den-start>.

⁶⁵ <https://www.gluecksspiel-behoerde.de/de/news/214-ggl-forciert-kampf-gegen-illegale-gluecksspielangebote-von-lottoland>

⁶⁶ <https://www.gluecksspiel-behoerde.de/de/news/366-ggl-veroeffentlicht-taetigkeitsbericht-2023-rueckblick-erfolge-und-marktzahlen>

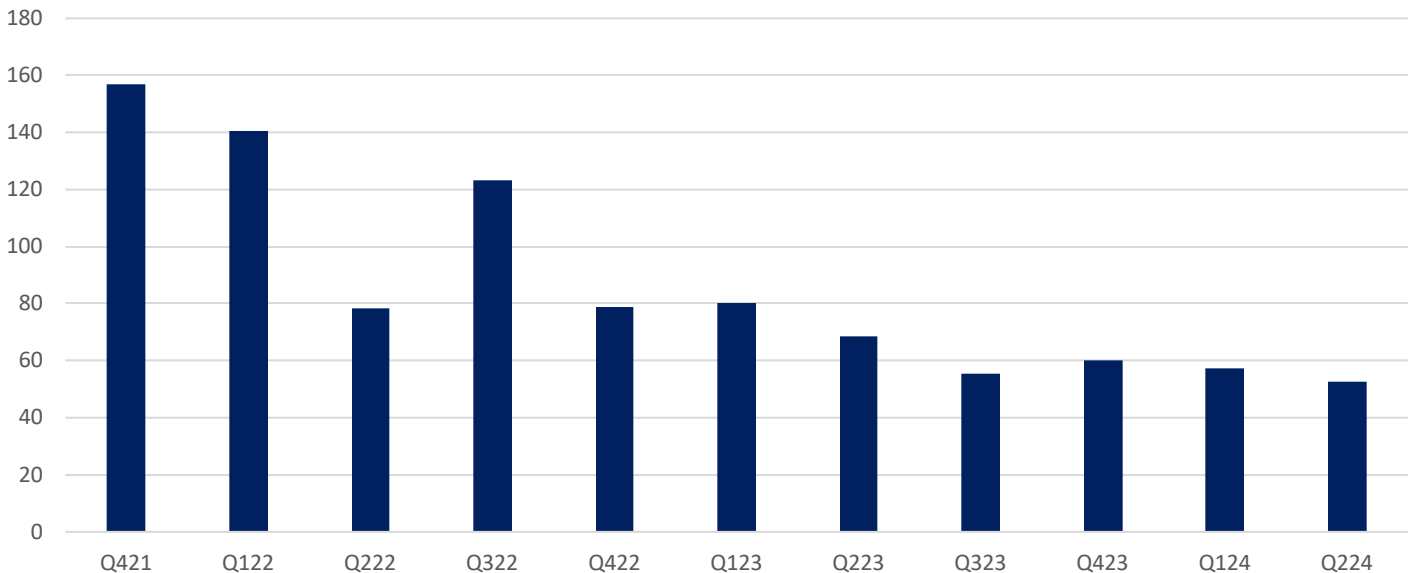
enforcement against unlawful gambling operations. While some success appears to have been achieved in stopping Maltese-licensed operators from targeting Germany, this is less certain for offshore hubs outside Europe, especially Curacao.

One material area of enforcement success has been that GGL has persuaded Google that from September 2024 only domestically licensed operators will be able to advertise gambling into German consumers.⁶⁷ Significantly, this decision was only posted in August, showing that cooperation between regulators and key digital stakeholders can yield rapid and effective results.

Establishing black market size

The size of Germany’s black market is the source of material dispute, with the GGL downplaying its size while operators active in the market believe it is much bigger.⁶⁸ It should also be noted that Germany provides regulated revenue figures net of stakes taxes, which reduces comparable customer expenditure by 30-50%. German official figures can therefore be misleading or non-comparable when taken out of context. The size of the German ‘grey’ market prior to full implementation of domestic regulation and the impact of increasing consumer friction can be seen from German slots tax yields:⁶⁹

Germany slots tax (€m)



In addition, the scale of the grey market prior to domestic regulation was visible to Regulus through analysis of Maltese company accounts as well as the accounts of public companies with material German revenue such as Entain.⁷⁰ We can therefore reasonably infer that the market was over €2bn prior to enforcement, while the GGL’s own June 2024 comments on the success of its enforcement from the interim report are instructive ‘*The GGL’s approach against illegal gambling is having an effect, but it remains a challenging task, especially since the actors in the illegal market operate internationally*’ We are therefore confident that our estimate of a German black market of c. £1.9bn or 60% of the total online market is conservative.

⁶⁷ <https://support.google.com/adspolicy/answer/15317776?hl=en>

⁶⁸ <https://next.io/news/regulation/german-gambling-regulator-disputes-claims-black-market-growth/>

⁶⁹ <http://www.bundesfinanzministerium.de/>

⁷⁰ <https://www.entaingroup.com/investor-relations/regulatory-news/> (October 2020: German licensing and Tolerance Policy; sports-betting licences)

Best practice lessons

Germany's best practice lessons are fourfold:

- high levels of consumer friction in the regulated market create large black markets regardless of enforcement
- enforcement mechanisms that do not concentrate on and provide effective solutions for the offshore nature of black markets are structurally ineffective
- complex relationships between regulatory and law enforcement stakeholders created by an equally complex rules-based system undermine rather than enhance enforcement
- nevertheless, cooperation between the regulator and Google has yielded significant results in changing Google's advertisement rules for gambling to restrict black market visibility, albeit the change in rules several years after market regulation also demonstrates that this cooperation has to be pro-active and enforced to achieve results

Enforcement tools used in practice

The Hungarian regulator was particularly active in enforcement between 2014 and 2018, issuing numerous sanctions against international operators. This enforcement slowed after the rulings from the CJEU confirmed that Hungary's gambling regulations was not compatible with EU law and historic blocks were lifted.

However, recent reports suggest that the SZTFH has resumed its enforcement efforts and intends to sanction operators stringently following the 2023 legislative changes to partially open the market, including by using its new and expanded enforcement powers.⁷⁴

Combined with a successful implementation of its reformed regime, this could potentially have a significant positive effect on the country's channelisation rate, yet the compatibility of Hungarian gambling law continues to be a matter of contention under EU law, and it seems unlikely that Hungary will reach a level of channelisation which would be comparable to more liberalized EU countries in the short term despite considerable success in disrupting specific operators since 2023 with both direct action and the threat of fines as a deterrent, as noted above.

Establishing black market size

Regulus estimates that the Hungarian online offshore market is c. £100m, or c. 63% of the total online gambling market. However, because Hungary is a relatively small market figures are especially opaque. They are also subject to significant short-term volatility due to specific enforcement against operators who had developed a material presence in the market but who have been recently forced to leave.

Best practice lessons

Like Norway, Hungary has demonstrated that targeted enforcement using a blacklist, payments blocking, and regulatory cooperation with the banking sector can be highly effective at disrupting offshore supply. However, unless and until Hungary removes consumer frictions to using its forthcoming domestically regulated market by ensuring minimal product and price distortions as well as adequate consumer choice, a black market in Hungary is likely to prove resilient in the longer term, in our view.

⁷⁴Official register of blocked gambling websites, accessible at: <https://sztfh.hu/nyilvantartasok/szerencsejatekugyi-blokkolt-honlapok/>. See also: official announcement by SZTFH of 24 May 2024, accessible at: <https://sztfh.hu/tovabb-tisztul-a-hazai-szerencsejatek-piac-ujabb-illegalis-szereplo-vonul-ki-magyarorszagra/>.

Netherlands

The Netherlands launched its regulated online gambling market in October 2021, and since has been rather active in taking enforcement measures against licensed and unlicensed operations and advertising. This included the issuance of high fines (up to € 12.5 million) even in cases of a limited exposure to the market as deterrents. Whether enforcement currently is effective overall is however, difficult to confirm just yet. The example of the Netherlands, however, does provide insights into how to successfully/unsuccessfully manage a transition from the unregulated to regulated market. In the hopes of achieving a channelization rate of at least 80 % of the market following the introduction of a licensing regime for online gambling, the Netherlands initially were not aggressive in enforcing against operators present on the Dutch market prior to the new laws taking effect, however, over the years this changed and the historically used “prioritization criteria” turned into a rather ad hoc and unexpected short-term closing of the market for some operators just before the market opened. The Netherlands is currently estimated to reach an online channelization rate similar to that of Denmark as the market rapidly matures.

Enforcement tools available by law

In the Netherlands, all forms of gambling which are not licensed in the Netherlands but possible to participate in from the Netherlands and intentionally offered in the Netherlands are unlawful and may be enforced against by the Dutch Gambling Authority (the Kansspelautoriteit, KSA).

Since November 2021,⁷⁵ the KSA generally applies the following criteria for determining whether to commence proceedings against locally unlicensed offers, or not:

- whether the illegal offer targets Dutch consumers;
- the number of Dutch players making use of the illegal offer;
- the degree of harm that the illegal offer poses to the public objectives of the KSA; and
- whether the illegal offer, or other circumstances, could draw players away from the legal market.

For supervision purposes, officials of the KSA may participate in games of chance, using an alias, if necessary, Article 34c Betting and Gaming Act.

The KSA may further (with the assistance of local law enforcement as necessary) place seals on business premises (Article 34d Betting and Gaming Act) request a court order to perform searches (Article 34e Betting and Gaming Act) and seize objects (34i Betting and Gaming Act), yet in order to enforce these where illegal operators are based outside of the Netherlands, the KSA depends on the cooperation of foreign law enforcement authorities. In addition to these measures, the KSA may:

- issue binding instructions and initiate administrative enforcement action, Article 34n Betting and Gaming Act
 - o this may include cease-and-desist orders;
 - o instructions to payment service providers to block payment transactions, 34n No. 4 Betting and Gaming Act;
 - o instructions to public electronic communications service providers to render inaccessible certain data stored, transmitted or used for the organization, participation and advertising of unlicensed games of chance (this, however, does not mean the manipulation, blocking or filtering of internet traffic including DNS traffic), Article 34n No. 4 and 5 Betting and Gaming Act, but only if the KSA obtains a court authorization prior to proceeding;

⁷⁵ See, <https://kansspelautoriteit.nl/nieuws/2021/november/ksa-selecteert-25-illegale/>.

- impose an administrative penalty, Article 35a Betting and Gaming Act (no more than the sum of the 6th category referred to in art 23 (4) penal code or, if that it more, 10% of the turnover in the financial year preceding the order)
- issue a public warning to inform players of any harmful game of chance on offer, Article 35e Betting and Gaming Act, naming possible if there is a real and acute risk of players being disadvantaged and if there is a reasonable suspicion of a violation, but the warning will point out that a violation has not been confirmed yet.
- Referring cases for criminal investigation and sanctions, Article 36 Betting and Gaming Act.

Enforcement tools used in practice

During 2017-2021, an evaluation report which analyzed the efficiency and effectiveness of the KSA⁷⁶ found that most of the KSA's enforcement actions focused on enforcement against illegal online offerings, consistent with it being mentioned as a priority in the KSA's corresponding Supervisory Agendas. Overall, enforcement was, however, limited due to the KSA being understaffed and having to "work while building the shop" during a transition from the unregulated to the regulated market, which was characterized by multiple delays and uncertainties. The evaluation report also mentions that market players and various government organisations found that combating illegal supply still received too little attention from the KSA and that the KSA could do more about this, eg., by urging telecom parties to shut down illegal website or by urging payment service providers not to provide payment services to illegal providers. The legal basis for giving instructions and/or orders to payment service providers exists since the new gambling laws entered into force, but it is unclear whether the KSA is making use of it. The KSA does not maintain a publicly accessible blacklist.

In general, the KSA has been significantly more active in its enforcement since market opening compared to previous years. It continues to prioritise enforcement against black market operations and advertising over enforcement against licensees. Out of the 29 fines published, 19 were directed at unlicensed actors. It also seems likely that it makes considerable use of informal enforcement (for which there is no publicly available information), as the importance (and effectiveness) of informal enforcement such as via warning calls and letters to operators, suppliers, affiliates, and others was already highlighted by the KSA during the evaluation conducted on its enforcement activity during 2017-2021. Of note is that the KSA believes such enforcement to be effective also due to the fact that it is not published (and thus does not involve any form of "naming and shaming"), as this is seen to motivate voluntary cooperation/compliance. The KSA also likely continues to apply other "soft enforcement" measures, e.g., in the form of collaborations/knowledge exchange with other regulators, education (of players and other stakeholders) etc.

Establishing black market size

Regulus estimates the Dutch online black market to be c. £88m, or c. 9% of the total market. According to the the KSA's 2023 annual report, domestically regulated channelling stood at 90%, meaning Regulus estimates are very similar to the Dutch regulator's own view.⁷⁷ Significantly, tighter regulatory restrictions on advertising have been recognized by the regulator and the trade body as a cause of a 3ppt reduction in channelling and in increase in black market usage.⁷⁸

⁷⁶ See evaluation report of KWINK Groep "Evaluatie Kansspelautoriteit" of 31 October 2022, <https://www.rijksoverheid.nl/documenten/rapporten/2022/12/05/tk-bijlage-2-evaluatie-kansspelautoriteit-2017-2021-eindrapport-kwink-groep>.

⁷⁷ <https://kansspelautoriteit.nl/over-ons/publicaties/jaarverslag/>

⁷⁸ <https://www.intergameonline.com/igaming/news/dutch-trade-association-questions-aires-illegal-market-concerns>

Best practice lessons

The Netherlands demonstrates that increases in consumer friction caused by tightening regulation increases the use of the black market even when the regulator uses enforcement powers. However, the new chairman of the Dutch regulator has already made it clear that enforcement measures against the black market need to be tougher and tighter.⁷⁹ The KSA takes black market threats very seriously and monitors channeling closely, which is a key best practice takeaway

⁷⁹ <https://next.io/news/regulation/ksa-chair-groothuizen-vows-crackdown/>

Norway

Norway acts as an example for a jurisdiction with a monopoly regime and a significant black-market despite payment blocking having been possible for years and relevant tools having been strengthened through legislative changes on multiple occasions (e.g, 2020 to expand payment blocking provisions, and most recently, in 2023, to consolidate the previous legislation into one main legislation and pave the way for new enforcement tools to use against illegal operators)⁸⁰. It is believed that over 66 % of all money staked by Norwegian players goes to the black market and that, since 2010, the black-market websites' revenues have tripled, which some argue may be connected to the restrictions on stakes, product, 'affordability' checks and advertising, which were introduced over the years.⁸¹

Enforcement tools available by law

The Norwegian Gambling Act reserves the exclusive right to offer gambling for the state-owned operator Norsk Tipping,⁸² and prohibits the unlicensed offering or assistance of gambling aimed at the Norwegian market,⁸³ including its marketing⁸⁴ or facilitation of related payment transactions⁸⁵.

The Norwegian Gaming Authority, Lottstift, is given supervisory and enforcement powers by the Act, specifically it may:

- Issue regulations on digital communication, Section 25 Gambling Act
- Order any person to provide information and access to information as considered relevant and conduct related investigations (on pain of fine if need be), section 26, 33 Gambling Act
- Issue orders to rectify illegal conditions and close down illegal activities by means of cease-and-desist orders (on pain of fine if need be), Section 32, 33 Gambling Act
- Suspend payment transactions, Section 35, 33 Gambling Act. Lottstift publishes a list of unlicensed operators/websites on its website.⁸⁶
- Impose infringement fees on offenders if the violation is significant or has occurred repeatedly, Section 36 Gambling Act
- Punish the operation/marketing of illegal gambling by a fine or imprisonment of up to one year, Section 37 Gambling Act.

Enforcement tools used in practice

Lottstift continues to step up enforcement efforts, particularly against unregulated operators, local banks and payment service providers. Lottstift also has announced plans of making use of DNS blocking of websites from 1 January 2024 onwards.⁸⁷ Before the DNS blocking is in place, Lottstift relied on actively approaching illegal gaming companies to request that they stop their gambling activity in Norway, combined with compulsory fines where necessary, with mixed success.

⁸⁰ See updated Norwegian Gambling Act which took effect on 1 January 2023, <https://lovdata.no/dokument/NL/lov/2022-03-18-12>.

⁸¹ See, <https://bettingandgamingcouncil.com/news/new-research-reveals>.

⁸² See Section 10 Gambling Act, only some minor exceptions apply for charitable lotteries.

⁸³ See Section 4 Gambling Act.

⁸⁴ See Section 6 Gambling Act.

⁸⁵ See Section 5 Gambling Act.

⁸⁶ <https://lottstift.no/for-spillere/slik-blir-du-lurt-av-ulovlige-spillselskap/>, <https://lottstift.no/for-spillere/slik-blir-du-lurt-av-ulovlige-spillselskap/pengespillselskaper-uten-tillatelse-i-norge/>

⁸⁷ <https://kommunikasjon.ntb.no/pressemelding/--blokkering-av-ulovlege-spelsider-vil-forebygge-pengespelproblem?publisherId=1726314&releaseId=17963194&lang=no>

Early signs are that the combination of DNS blocking and the payments blocking noted above are having some success in combination. As we have noted, a number of offshore operators have left the market since Lottstift's enforcement stepped up.

Establishing black market size

The Norwegian offshore market has historically been more 'grey' than black because of EU (EEA) challenges to the monopoly and a historical lack enforcement. Regulus estimates the Norwegian offshore market is c. £237m, or 49% of the total market. Regulus estimates are based on analyzing the trading data a number of Scandinavian public companies that break down regional revenue. Lotstift believe that there were c. 250,000 players using offshore accounts in 2022, which triangulates to a plausible annual average revenue per offshore user of £948 (the figure for the UK, where mass market penetration is higher, is c. £560)

Best practice lessons

Norwegian enforcement action demonstrates that specific operators can be disrupted and potentially forced to exit due to a combination of direct legal pressure and business disruption through website and payments blocking. However, the experience of other jurisdictions also shows that other operators are likely to fill the gaps left by those who are forced to leave. International experience shows that only by reducing consumer friction by providing adequate choice can Norway increase channeling significantly.

Ontario

Ontario, the first territory in Canada to apply a novel interpretation of Canada's federal laws to introduce a licensed online gambling market,⁸⁸ acts as a recent example for a so far successful and effective transition from the unregulated to regulated market. The transition featured the following key elements:

- Prior consultation with the industry and subsequent clear communication and regular updates on developments and expectations;
- Staggered enforcement approach;
- Introducing both a licensing requirement for operators and a registration requirement for suppliers;
- Making it a condition not to target Ontario or risk not being eligible for a licence; transparently communicating this expectation combined with announcements of relevant deadlines etc.

The territory's channelisation rate was considered to be 85.3 % in March 2023 and thus significantly different to the situation before market launch, when an estimated 70% of online gambling occurred on unregulated sites,⁸⁹ similar to what is still the case in the rest of Canada, which is considered to have a low channelisation rate.

Canada further is known for ineffective regulation due to different monopolies existing in each province and territory, the regulation being fragmented as a result (including on taxation and advertising) and significant product-restrictions being in place. In addition, Canadian regulators' enforcement appetite has traditionally been low and it has been called into question whether Canadian laws actually make offshore offerings to Canadian players illegal, which makes effective enforcement burdensome and is why the market is more commonly referred to as a "grey" rather than black market.

Enforcement tools available by law

Unlicensed casino gambling or betting are indictable offences and can lead to imprisonment for up to two years according to the Sections 203 and 206 of the (federal) Canadian Criminal Code.⁹⁰

The powers awarded to the Alcohol and Gaming Commission of Ontario (AGCO) by means of local legislation, the Gaming Control Act in particular,⁹¹ are drafted with regulated actors and/or applicants front of mind, and thus include the AGCO being able to issue warnings and order corrective action, impose progressive sanctions including suspensions and administrative monetary penalties (up to CAD 200,000 per violation) or revoke an entity's status as a registration/applicant. However, their sentiment also applies to unlicensed operators/suppliers and the AGCO's Standards for Internet Gaming,⁹² and in particular provision 1.22 of it, further make clear to unlicensed operators/suppliers that they must exit or face "appropriate regulatory action" and risk having future applications rejected.

⁸⁸ See considerations about the scope and application of Section 207(1)(a) Canadian Criminal Code here (including mentions of the challenges brought against Ontario's regulatory regime by First Nations: <https://s3.amazonaws.com/documents.lexology.com/7e90cc99-de81-41fe-b98f-238e4cb46337.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1686389563&Signature=ptd05QUqzWP3%2BQEOLINR%2BI4HUi4%3D>.

⁸⁹ As referenced in igaming Ontario's press release marking the regulated market's first anniversary, <https://www.agco.ca/blog/lottery-and-gaming/apr-2023/one-year-anniversary-ontario-internet-gaming-market-new-study-shows>.

⁹⁰ See Canadian Criminal Code, <https://laws-lois.justice.gc.ca/eng/acts/c-46/>.

⁹¹ See Ontario Gaming Control Act, <https://www.ontario.ca/laws/statute/92g24>.

⁹² See Standards for Internet Gaming, <https://www.agco.ca/lottery-and-gaming/guides/registrars-standards-internet-gaming>; announce ment of end of transition period: <https://www.agco.ca/bulletin/2022/information-bulletin-updates-registrars-standards-internet-gaming-including-ending>.

Enforcement tools used in practice

Since the market launch, enforcement in the form of fines has been focused on regulating licensees, not combating the black market.

Establishing black market size

Regulus estimates the black market in Ontario to be c. £143m, or c. 9% of the total market (NB, including the online gambling element of the Ontario Lottery, not reported in official market statistics). An official study conducted by IPSOS for the Ontario regulators estimated a channelling rate of 85.3% in the year to March 2023, implying a black market rate of c. 15%.⁹³ Since this rate is likely to have improved during 2023, we believe our estimates are in line with likely movements in the official rate and are conservative compared to the last official estimates.

Best practice lessons

Ontario has not yet materially enforced against the black market. However, Ontario's limited consumer frictions are achieving relatively high rates of channelling even in a new market.

⁹³ <https://igamingontario.ca/en/annual-report-2022-2023>

Sweden

Sweden regulated online gambling in 2019 and adopted a relatively liberal approach with the significant exception of limiting customer bonuses to sign-on bonuses up to c. £10. However, the regulatory regime has been criticised that in certain instances (including when the regulated market originally launched) clear operational guidance was sometimes lacking, resulting in fines being imposed. Also, some more recent product restrictions have been understood to have a negative impact on channelisation⁹⁴ and this also matches that the channelisation rate has been lower than the projected 90% by the government, although they did not determine the period by which the 90% should have been achieved by. However, the Gaming License Inquiry estimated that 90% channelisation rate could happen within two years of the new gaming regulation coming into force, ie on 1 January 2021. While the channelisation rate has been stable after the regulation of the market, it has been lower than estimated. In 2020 it was 85% whereas in 2019 it was 88%.⁹⁵ A study prepared by Copenhagen Economics in 2020 also revealed that channelisation rates differ considerably depending on vertical (eg, were higher in relation to sports betting than to online casino) and appear to be decreasing steadily.⁹⁶ Some have estimated that channelisation rates are as low as 70%.⁹⁷ Four years after market launch, the channelisation is still relatively low and many continue to gamble on unregulated websites even though the most significant Covid-19 related product restrictions were removed in November 2021 (a deposit cap of c. £400 pcm per account for online casino). Explanations for this vary but for many the most important aspect leading them to gamble on unlicensed sites are better odds and better bonus offerings but also some players might have restricted themselves via spelpaus.⁹⁸

Finally, Sweden also is of interest as a jurisdiction possibly worth monitoring to better understand the effect that the introduction of a B2B supplier regime can have on successful/unsuccessful regulation. Sweden only recently introduced a B2B supplier licensing regime for the first time (laws took effect on 1 July 2023) in the hope of this positively impacting on the jurisdiction's channelisation rate and efforts of keeping the black-market out. The immediate impact was negligible, however (see below).

Enforcement tools available by law

The Swedish Gambling Act 2018⁹⁹ and the Gambling Ordinance 2018¹⁰⁰ introduced an open, competitive licensing system in Sweden and brought Svenka Spel's online gambling monopoly to an end.

According to the Swedish Gambling Act 2018 (as amended), the Swedish Gaming Authority (Spelinspektionen, SGA) has a mandate to:

- Exercise oversight for compliance with the Swedish Gambling Act, Chapter 18, Section 3 Gambling Act

⁹⁴ See, eg.: <https://www.egba.eu/uploads/2021/06/An-Optimum-Betting-Market-A-Regulatory-Fiscal-and-Integrity-Assessment-1.pdf>; https://bettingandgamingcouncil.com/uploads/Downloads/PwC-Review-of-Unlicensed-Online-Gambling-in-the-UK_vFinal.pdf.

⁹⁵ [Utvärdering av omreglingen av spelmarknaden – Slutrapport \(statskontoret.se\)](https://utvardering.av.omreglingen.av.spelmarknaden-slutrapport.statskontoret.se)

⁹⁶ See <https://copenhageneconomics.com/wp-content/uploads/2021/12/copenhagen-economics-the-degree-of-channelization-on-the-swedish-online-gambling-market.pdf>.

⁹⁷ See <https://igamingbusiness.com/legal-compliance/sweden-europes-accidental-black-market/>.

⁹⁸ Copenhagen Economics (2020) in statskontoret Sweden publication [Utvärdering av omreglingen av spelmarknaden – Slutrapport \(statskontoret.se\)](https://utvardering.av.omreglingen.av.spelmarknaden-slutrapport.statskontoret.se)

⁹⁹ See https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/spellag-20181138_sfs-2018-1138/

¹⁰⁰ See https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/spelforordning-20181475_sfs-2018-1475/.

- Perform inspections and undertake investigations (assisted by the policy where needed), Chapter 18, Section 4, 5 Gambling Act
- Intervene in cases of money laundering and terrorist financing, Chapter 18, Sections 17-22 Gambling Act
- issue an injunction or bans (coupled with fines where necessary), Chapter 18, Sections 23, 24 Gambling Act
- order a payment service provider to block electronic payment transactions to and from unlicensed gambling service providers, Chapter 18, Section 26 Gambling Act
- order an internet service provider to create a warning message that is clearly displayed in conjunction with visits to unlicensed gambling websites, Chapter 18, Section 28 Gambling Act
- subject offenders to punishments and pecuniary penalties (fines or imprisonment for a maximum of two years for operations/marketing, in severe cases between 6 months to six years – via the public prosecutor as the responsible enforcement authority), Chapter 19, Section 1-3
- arrange for seizures, forfeiture and/or pecuniary penalties, Chapter 19, Sections 8-10 Gambling Act.

Enforcement tools used in practice

Enforcement activities of the SGA, particularly in the years following the re-regulation of the Swedish gambling market, focused particularly on fining licensed operators for AML/CTF and RG shortcomings including e.g., violations of Sweden's bonus restrictions. Several warnings, combined with sanction fees were issued in relation to such violations and the SGA has also revoked gambling licences for compliance failures including as passivity in launching their business following the grant of the licence. In comparison¹⁰¹, the SGA has not been very active in its enforcement against the black market and has recently been reported to have never taken advantage of its payment blocking powers due to "practical difficulties" making the implementation of the regime (as it was) difficult. The relevant payment blocking provisions have, however, been identified by the Swedish government as relevant for channelisation and thus were amended to allow the SGA to create new regulations concerning the obligations that payment providers have to provide information for blocking the unlawful payments.¹⁰²

Establishing black market size

Regulus estimates that the online black market in Sweden is c. £152m, or c. 13% of the total online gambling market. The main causes for this black market is the inability of operators to offer retention bonuses, which causes price and value friction, the continued impact legacy spending caps on online casino during the Covid-19 pandemic, and customers seeking to work around Sweden's equivalent of GAMSTOP. The Swedish horseracing monopoly ATG, which also operates sportsbetting and online casino, estimates that the channelization rate for online gaming specifically (half the market) is 69-82% and 88% for sports betting in Q3 2023, which combined with official statistics suggests our overall black market estimates for Sweden are relatively conservative.¹⁰³

¹⁰¹ See eg, VIXIO analysis of 15 March 2023 concerning the regulatory and enforcement landscape in the UK; Sweden and Malta, <https://gc.vixio.com/research-reports/regulatory-and-enforcement-landscape-united-kingdom-sweden-and-malta>.

¹⁰² See <https://igamingbusiness.com/legal-compliance/sweden-gambling-regulator-given-new-payment-blocking-powers/>.

¹⁰³ <https://igamingbusiness.com/legal-compliance/legal/atg-flags-alarming-increase-in-illegal-swedish-gambling/>

Best practice lessons

Sweden illustrates the fact that optically small restrictions such as the inability to offer customer bonuses or even short-lived consumer spending frictions such as the Covid-19 deposit cap on online casino can have a material impact on channeling. Like Denmark, Sweden is also hampered by laws which do not clearly criminalize accepting deposits from Swedish customers, instead focusing on the more subjective definition of 'targeting'. When even relatively liberal regimes introduce customer frictions in the regulated market while failing adequately to tackle the black market with countermeasures, a material black market can emerge. Sweden clearly demonstrates that it is not unreasonable to assume that if further regulatory frictions are introduced in Britain and the black market threat is not taken seriously, a black market of over 10% is not just possible, but likely, in our view.

United Kingdom

Enforcement tools available by law

The Gambling Commission is responsible for issuing and enforcing financial penalties regarding any breaches of the LCCP or the Gambling Act 2005.¹⁰⁴ Any contravention of the Gambling Act 2005, whether committed from within Britain or from abroad, is a criminal offence and will trigger a potentially unlimited fine, enforced by the courts, and/or imprisonment for up to 51 weeks. With the exception of advertising, this was very different prior to the introduction of the Gambling Act, as the position was that any gambling that was organised outside of Great Britain was not a matter of English law and not justiciable by the English courts. Further, enforcement against unlicensed operations only significantly changed and tightened when the Gambling Act was first amended in 2014 to become a point of consumption regime (including point of consumption tax) and the UK took the position that, unlike the belief before, operators based in the EEA and other whitelisted jurisdictions¹⁰⁵ would equally require local licensing to lawfully operate and market their products in Britain.

In terms of available enforcement tools, the Gambling Act 2005 focuses on the enforcement that the Gambling Commission can take to ensure compliance of licensed operators and only provides limited guidance on the enforcement tools that the Gambling Commission may use against the black market. Mainly, it can investigate whether an offence has been committed and institute criminal proceedings, Section 28 Gambling Act 2005. In practice, the Gambling Commission also utilizes relationships with web hosting companies, payment service providers, social media sites and others to ask them to suspend or IP block British consumers from accessing illegal websites/remove payment services or prevent websites appearing on search engines or being hosted, but these third parties then act on a voluntary basis to prevent illegal activity via their platforms and services. The law currently does not expressly grant the Gambling Commission specific payment/website or other blocking powers. This was addressed in the White Paper published in April 2023 by the Department for Culture, Media & Sport (DCMS), which indicated at the time that plans were “when parliamentary time allows” to “seek to further tackle illegal online operators by legislating to give the Commission powers to require for example internet service providers (ISPs) and payment providers to stop providing their services to black market websites. This will enhance the Commission’s business disruption capabilities.”¹⁰⁶

Enforcement tools used in practice

According to its latest annual report, the Gambling Commission issued £60.2 million in fines or regulatory settlements in 2022-2023 across 24 gambling operators. Yet, the report only includes one mention of unlicensed websites and does not specify whether any action was taken apart from the generation of intelligence reports.¹⁰⁷

¹⁰⁴ Gambling Act 2005, <https://www.legislation.gov.uk/ukpga/2005/19/contents>.

¹⁰⁵ Such as Alderney, Isle of Man, Gibraltar, Antigua and Barbuda, and Tasmania.

¹⁰⁶ DCMS, High Stakes: Gambling Reform for the Digital Age, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1153228/1286-HH-E02769112-Gambling_White_Paper_Book_Accessible1.pdf.

¹⁰⁷ <https://www.gamblingcommission.gov.uk/report/annual-report-and-accounts-2022-to-2023/annual-report-22-to-23-a-year-in-review-keeping-crime-out-of-gambling>

In the second quarter of 2024 (April – June) the Gambling Commission:¹⁰⁸

- removed 33,316 of 43,439 reported URLs from search engines
- removed 126 of 134 reported websites from search engines
- removed 22 pieces of content out of 36 referred from platforms
- had 46 of 197 reported websites removed from registrars or hosts
- wrote 191 cease and desist letters to illegal black market operators
- wrote 75 cease and desist letters to advertisers and affiliates
- had 25 websites removed by advertisers and affiliates

However, no criminal investigations were commenced, no referrals were made to other agencies, and no prosecutions took place. The Gambling Commission was therefore busy identifying and disrupting the symptoms of black market activity but did little to impact the causes. Indeed, the fact that over 100 black market websites are still being found per quarter despite Britain being domestically regulated since 2014, with 75 identified affiliates and advertisers helping them to promote their content in Britain, demonstrates the extent to which black market operators are resilient and regenerative to disruption that occurs only to the digital face of their distribution model.

In addition, the recent NatCen evaluation of Britain's credit card ban from April 2020 admitted that a result of the ban could be an increase in black market activity but that there was no way to evaluate this.¹⁰⁹ The lack of credible black market impact evaluation in a key piece of regulatory reform is concerning and demonstrates a lack of joined-up policy thinking, in our view.

Establishing black market size

Regulus Partners independently estimates the online black market in Britain to be worth c. £328m, or 5% of the total market. This figure is 60% higher than the stakes-led analysis conducted by Frontier Economics, which found 2.1% of online stakes was being channelled into the black market. However, we note that Frontier has offered a conservative estimate and that staking can be a challenging way to measure customer behaviour that can tend to understate activity (stakes are the highest figure a customer gambles with and not a figure gamers consider compared to deposits or net losses).

Best practice lessons

The Gambling Commission has been highly active in disrupting URLs, websites, and affiliates. However, the continued presence of large number of black market sites and the growth in black market usage by British consumers shows that these countermeasures have had limited effect. The Gambling Commission has powers of prosecution and regulatory referral to other agencies that are not being used to full effect. The Online Safety Act strengthens the ability to police the internet against black market gambling in theory, but it will have little impact in practice if law enforcement agencies and regulators do not coordinate and if black market gambling is not seen as an enforcement priority.

On the current pattern of increasing consumer friction in the domestically regulated market while little is done to prevent black market leakage, international experience shows Britain's illegal gambling leakage could more than double. At 10% black market leakage, which is still lower than that of Sweden, a £700m criminal sector will be created and millions of British consumers will be unprotected.

¹⁰⁸ <https://www.gamblingcommission.gov.uk/about-us/impact-metric/ro3-preventing-crime/activity-to-tackle-unlicensed-gambling-and-outcomes>

¹⁰⁹ <https://natcen.ac.uk/publications/evaluation-credit-card-ban#:~:text=related%20financial%20harms.,Great%20Britain%20was%20the%20first%20country%20to%20implement%20a%20complete,through%20a%20money%20service%20business.>

Appendix: customer cohorts and black market use

Gambling is a consumer discretionary product meaning that customers choose to gamble if they like it, they do not have to. As such, gambling has a high dichotomy in both consumer engagement and the levels of gambling different customers can afford. Since spending a lot of money gambling is often politicised it is worth illustrating a couple of similarly polarised points of consumer discretionary expenditure before considering gambling data:

- nearly all companies have a form of Pareto principle in terms of customer concentration, with the top 20% of customers generating 80% of revenue, which implies the top 20% spend 16x more than the bottom 80% on average; consumer discretionary is logically steeper because lots of consumers have the choice not to consume (unlike the basics of living)
- a stay in a suite in a top London hotel costs c. £3,000 per night vs. c. £80 for a budget hotel room – a c. 40x difference
- dinner at a top London restaurant can cost c. £1,000 per person vs. c. £20 for a more mainstream option on a budget– a 50x difference

It should not therefore be surprising to find similar disparities in patterns of gambling consumption, which is also reflected in recent Patterns of Play research into the UK market.¹¹⁰

Understanding the Pareto Curve of gambling consumption is very important for understanding what creates black markets and how to tackle them on four levels:

- a customer willing to spend thousands of pounds on their leisure pursuit will have different motivations and tolerances to friction to someone who occasionally bets £5; for example, the higher spending customer is more likely to seek out the products they want than accept the most visible domestic alternative
- a small number of high spending customers can support economies of scale in a black market industry in a way that large numbers of low spending customers cannot
- a small number of high spending customers can be very easy to miss in unweighted surveys and samples (or over-index in samples geared to gambling participation)

As the Frontier Economics report into black market gambling in the UK makes clear: *“gamblers who stake larger amounts with GB regulated operators are far more likely to be aware of, and engage with, black market online operators.”*

A one-size-fits-all response to black markets, or a response based on volume-related measures like web traffic or customer self-reporting is therefore likely to be highly distortive and ineffective both as a measure of the problem and as evidence for practical solutions.

¹¹⁰ <https://natcen.ac.uk/publications/patterns-play>

Conclusion

Black markets in online gambling are created when consumers cannot access the products they want at prices and values that are not distorted within their own domestically regulated market. The biggest causes of black markets are therefore government policies:

- taxes which must be passed on to the consumer
- product and spending restrictions
- lack of choice

When these frictions are introduced into a domestically regulated market there will always be at least some level of demand for black market products, even when the frictions are well-meaning and have net positive outcomes. However, once a critical mass of frictions is introduced, black markets can grow to become dangerously large, defeating the purpose of the policies that cause them. Because frictions can be measured, the likely scale of black market leakage can be effectively estimated. This data can also be triangulated with international studies and surveys to create a clear pattern of black market causes and adoption. The recent black markets survey undertaken by Frontier Economics for the Betting and Gaming Council on the scale of the black market in Britain (conservatively c. £2.7bn of online stakes) supports and complements these findings.

Regulatory frictions are an inevitable part of online gambling regulation; they cannot and should not be completely avoided. However, if the taxation and regulatory policies of a jurisdiction introduces frictions to protect customers or raise money, it is vital that they also introduce frictions into the functioning of the online gambling black market to prevent unnecessary and self-defeating leakage. This report identifies six key means by which regulators and law enforcement agencies can do this, and we demonstrate that they are far effective when used in coordinated combination:

- the prevention of targeted advertising, including through social media
- ensuring internet service providers block black market apps and websites
- blocking payments
- enforcing against the gambling supply-chain where it facilitates black market operators
- criminal and administrative enforcement
- blacklisting black market brands and operators

In Britain, the ability of regulators and law enforcement to police the black market has been given a significant boost by the recent introduction of the Online Safety Act. It is vital for both consumer safety and protecting taxes that these new powers, as well as under-utilised existing powers, are used to mitigate the growth of black market gambling in Britain as consumer frictions and therefore black market participation increase.

Disclaimer

While every effort has been made to ensure the accuracy of the data presented, the opaque and disjointed nature of some sources means that some assumptions have been made and some errors may be present. The information provided represents the opinions of the authors. Any assessment of trends or change is necessarily subjective. The information and opinions provided are not intended to provide legal, accounting, or investment advice, nor should they be used as a forecast. While the Report was commissioned by Entain plc and representatives of Entain plc and their advisors were given opportunity to comment on a draft, all analysis and conclusions presented are solely those of Regulus Partners. Regulus Partners may act, or has acted, for any of the companies and other stakeholders mentioned in this report.

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